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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~340.~~ 111

WILLIAM G. LANGFORD, PLAINTIFF IN ERROR,

vs.

CHARLES E. MONTEITH.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF IDAHO.

FILED FEBRUARY 26, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 340.

WILLIAM G. LANGFORD, PLAINTIFF IN ERROR,

vs.

CHARLES E. MONTEITH.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF IDAHO.

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UNITED STATES OF AMERICA, *ss:*

To Charles E. Monteith, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday in October, A. D. 1877, next, pursuant to a writ of error filed in the clerk's office of the supreme court of Idaho Territory, wherein William G. Langford is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison B. Waite, Chief Justice of the said Supreme Court of the United States, this sixth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

2 M. E. HOLLISTER,
Chief Justice of the Supreme Court of Idaho Territory.

On this 17th day of January, in the year of our Lord one thousand eight hundred & seventy-seven, personally appeared before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Jo. W. Huston, United States attorney for the dist. of Idaho Territory, attorney for appellee.

JOSEPH PINKHAM,
U. S. Marshal for Dist. of Idaho.

Subscribed and sworn to before me this 17th day of January, A. D. 1877.

[SEAL.] A. L. RICHARDSON,
Clerk Sup. Court I. T.

(Indorsed:) In Supreme Court United States. William G. Langford, pl'ff in error, vs. Charles E. Monteith, def't in error. Citation. Filed Jan'y 17th, 1877. A. L. Richardson, clerk.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the supreme court of the Territory of Idaho, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court of Idaho Territory before you, between Charles E. Monteith and William G. Langford, a manifest error hath hap'ned, to the great damage of the said William G. Langford, as by his complaint appears. We being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all

4 things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the 8th day of October, A. D. 1877, being the second Monday in said October next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison B. Waite, Chief Justice of the said Supreme Court, the 5th day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] A. L. RICHARDSON,
Clerk of the Supreme Court of Idaho Territory.

The foregoing writ of error is hereby allowed.

M. E. HOLLISTER,
Chief Justice Supreme Court Idaho Territory.

(Indorsed:) In Supreme Court United States. William G. Langford, pl'ff in error, vs. Charles E. Monteith, def't in error. Writ of error. Filed Jan'y 17th, 1877. A. L. Richardson, clerk.

5 *Amended complaint.*

In the justice court of D. J. Warner, justice of the peace in and for said county.

TERRITORY OF IDAHO,
County of Nez Perce, ss:

WILLIAM G. LANGFORD, PL'T'FF,
vs.
CHARLES E. MONTEITH, DEF'T.

The plaintiff complains and alleges that on or about the 13th day of November, A. D. 1874, said plaintiff by a lease made on or about said day, a copy of which is hereto attached and made a part hereof, at the county of Nez Perce, and Territory of Idaho, leased, demised, and let to the said defendant the premises situated in said county and Territory, described as follows, to wit: The office building, and enclosed ground adjacent thereto, the dwelling-house and enclosed grounds adjacent thereto, and two barns and yards as enclosed grounds adja-
6 cent thereto, all of said premises having been formerly used as Indian agency buildings and grounds, and situated near to and on the east and west side of Lapwai Creek, and near a mill formerly known as the "Agency Mill." That by virtue of said lease said defendant went into possession of said premises as the tenant of said plaintiff, and still continues in such possession. That the term for which said premises were demised as aforesaid, has terminated, and that the said defendant holds on and continues in possession of said demised premises without the permission of the said plaintiff, and contrary to the terms of said lease. That by the terms of said lease defendant agreed to deliver possession of said premises to plaintiff on ten days' previous notice; that after having given the said ten days' notice to deliver possession of said premises, the 8th day of Feb'y, 1875, on demand then and there made, plaintiff in pursuance of the terms of said lease and notice, on the said 8th day of Feb'y, 1875, demanded of defendant the delivery of the possession of the said premises to plaintiff,
7 but the defendant then and there refused to deliver possession of said premises, but forcibly detained the same, and continues to detain the same contrary to the terms of said lease, and to the form and force of the statute in such case made and provided. That the weekly value of the rents and profits of said premises is fifteen dollars per week.

Wherefore plaintiff prays judgment for the restitution of said premises, and for damages for the rents and profit thereof, and that such damages be trebled, amounting to the sum of forty-five dollars per week, so the same does not exceed on the day of trial before justice ($100.00), and for costs and disbursements.

(S'g'd) W. G. LANGFORD, *Pl'tff.*

TERRITORY OF IDAHO,
County of Nez Perce, ss:

W. G. Langford, being first duly sworn, says that he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true
8 of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

(S'g'd) W. G. LANGFORD.

Subscribed and sworn to before me this 4th day of March, A. D. 1875.

D. J. WARNER,
Justice Peace.

Refiled this 4th day of March, 1875.

D. J. WARNER,
Justice Peace.

Filed April 1st, 1875.

H. SQUIER.
Dist. Clerk.

9 *Copy of lease.*

Know all men by these presents that I, William G. Langford, in consideration of the covenants, agreements, and bond hereinafter contained, lease unto Charles E. Monteith the hereinafter described premises, for a term of from day to day only, until I shall have given ten days' notice to quit, or the said tenant shall, after ten days' notice to me the said Langford, deliver possession of the same to me in as good condition as when let, accident, reasonable use, and wear thereof excepted. And I, the said Langford, restrict the right or power of said tenant from subletting said premises, and I reserve myself rent at the rate of one dollar per week for each building named herein. The said premises are a part of my land purchased by me from the American Board of Commission's for Foreign Missions, as appears from my deed recorded in the office of the recorder in the record of deeds for Nez Perce County, Idaho
10 Territory, to which reference is hereby made, and the part rented is as follows: The office building and enclosed grounds adjacent thereto, used as the agency office, the dwelling-house and enclosed grounds adjacent thereto, and used as the agent's residence, and the two barns, known as the barns of the agency, and grounds adjacent as yards. In consideration of which, I, the said Charles E. Monteith, covenant and agree to and with said Langford, that under him and as his tenant, I will hold possession of said premises, until said lease is terminated as above provided; that I will not sublet or allow or deliver possession of said premises, or any part thereof, to any person except said Langford, and will pay the rent reserved as aforesaid; and for the full and faithful performance of each and every of said covenants and agreements above set forth, I, the said Charles E. Monteith, hereby bind myself unto the said Langford in the sum of three thousand dollars, to be well and truly paid unto said Langford as liquidated damages for each
11 and every breach of the said covenants and agreements, or any part thereof; but in case said covenants and agreements are complied with no part of said sum shall be paid.

Witness our hands and seals this 13th day of November, A. D. 1874.

W. G. LANGFORD. [SEAL.]
CHAS. E. MONTEITH. [SEAL.]

Witness:
JASPER RAND.
L. B. BOICE.

Summons.

In justice court, Lewiston precinct, Nez Perce County.

TERRITORY OF IDAHO,
County of Nez Perce, ss:

The people of the United States of the Territory of Idaho to the sheriff or any constable of the aforesaid county:

Whereas W. G. Langford, of the county of Nez Perce, hath exhibited unto me, a justice of the peace for said county, a complaint against Charles E. Monteith, of the county of Nez Perce, for that the said W. G. Langford, of said county of Nez Perce, on the 13th day of November, A. D. 1874, did rent and lease unto said C. E. Monteith, certain
12 premises, situated on Lapwai Creek in said county, the same being a part of what is known as the "Mission Claim," and that said lease has now expired, and that written notice has been given to said C. E. Monteith to quit and surrender said premises; and that the said C. E. Monteith now unlawfully holds and detains said premises from the said W. G. Langford, as will more fully appear from the complaint in said action now on file in my office. You are therefor' commanded to summons the said C. E. Monteith, if he be found in your county, to be and appear before me at my office in the city of Lewiston, county of Nez Perce, on the 22nd day of February, A. D. 1875. at eleven o'clock a. m., then and there to make answer unto the complaint aforesaid.

Given under my hand this 15th day of February, A. D. 1875.

(S'g'd) D. J. WARNER,
Justice of the Peace.

Filed 15th Febr., 1875.

D. J. WARNER, *J. P.*

Filed April 1st, 1875.

H. SQUIER,
Dist. Clerk.

13 *Answer.*

In the justice court, D. J. Warner, justice of the peace, in and for Nez Perce County, Idaho T'y.

WM. G. LANGFORD, PL'T'FF,
vs.
CHAS. E. MONTEITH, DEF'T.

Now comes the defendant, C. E. Monteith, and for cause of defense to the complaint, in the above-entitled action:

1st. Denies, that on or about the 13th day of November, or any other time, said plaintiff leased, demised, or let to said defendant any buildings, grounds or premises whatever, situated in Nez Perce Co., I. T., or any county in said Ter'ry.

2nd. Denies, that he forcibly detains the same from said pl't'ff.

3rd. Denies, that the weekly rental of said premises is fifteen dollars, or any other sum.

4th. Def't for further answer avers, that on said day of Nov.,
14 he did take from said pl't'ff an instrument in writing, purporting to be a lease of said premises, but that such instrument was made upon misrepresentation of fact, said plaintiff asserting that he

was the owner of said premises, which was not true, as this def't upon information verily believes.

5th. That said lands, buildings, and premises is property belonging to the United States, situated within an Indian reservation, forming no part of Idaho Territory; and to which the Indian title has never been extinguished.

6th. That said def't entered upon said premises, in and by virtue of being an employee of the United States, under direction and control of John B. Monteith, Indian agent for said reservation, long prior to the giving of said instrument by said def't to said pl't'ff.

7th. That said def't was in possession of said premises at the time of making said instrument, and was induced to yield such possession to said pl't'ff, upon misrepresentation of said pl't'ff.

15 8th. Def't further avers, the Gov'm'nt of the United States, through the proper department, has issued orders to the military to maintain this def't in the possession of said premises, against said pl't'ff.

9th. That said military has and does maintain said def't in said possession; that such maintainance is not procured by this def't, and that he is not permitted to yield said possession to said pl't'ff.

Wherefore, def't demands judgment against pl't'ff, including costs of suit.

TERRITORY OF IDAHO,
County of Nez Perce, ss:

C. E. Monteith, being first duly sworn, says, that he is the def't in the above-entitled action; that he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes to be true.

(S'g'd) C. E. MONTEITH.

Subscribed and sworn to before me this 23rd day of February, 1875.
H. O. ADAMS, *J. P.*

16 Filed March 10th, 1875.
D. J. WARNER, *J. P.*

Filed April 1st, 1875.
H. SQUIER,
Dist. Clerk.

Motion to dismiss.

Appeal from justice' court.

W. G. LANGFORD, PL'T'FF & APP'L'T,
vs.
C. E. MONTEITH, DEF'T & APP'L'T.

W. G. LANGFORD, PL'T'FF & APP'L'T,
vs.
G. E. ALEXANDER, DEF'T & APP'L'T.

W. G. LANGFORD, PL'T'FF & APP'L'T,
vs.
G. W. SWANK, DEF'T & APP'L'T.

W. G. LANGFORD, PL'T'FF & APP'L'T,
vs.
GEO. AINSLIE, DEF'T & APP'L'T.

W. G. LANGFORD, PL'T'FF & APP'L'T,
vs.

17 And now comes the defendants and appellants in the above entitled cause, and moves the court now here to dismiss the said actions from this court, and set aside and annul the judgments rendered therein in the justice' court, for the reason that the said justice' court had no jurisdiction of said actions.

(S'g'd) HUSTON & HOWE,
For Def'ts & App'l'ts.

Filed April 21st, 1875.

H. SQUIER,
Dist. Clerk.

Service by copy accepted this 21st April, 1875.
(S'g'd) RAND & ISHAM,
Att'ys for Pl't'ff.

18 *Motion for nonsuit.*

In the district court of the first district of Idaho, in and for Nez Perce County.

W. G. LANGFORD, PL'T'FF,
vs.
C. E. MONTEITH, DEF'T.

And now comes the said defendant, by his counsel, and moves the court for a nonsuit in said cause, upon the following grounds:

1st. The complaint does not state facts sufficient to support a verdict.

2nd. That the proof on the part of the pl't'ff does not sustain the complaint.

(S'g'd) J. M. HOWE AND
JO. W. HUSTON,
Att'ys for Def't.

Filed May 4th, 1875.

H. SQUIER, *Clerk.*

19 *Judgment.*

WILLIAM G. LANGFORD
vs.
CHARLES E. MONTIETH.

This cause having come on to be heard, and the parties thereto having duly submitted the cause to the court, and the jury having found a verdict for the plaintiff, William G. Langford, against the defendant, Charles E. Montieth, and assessed plaintiff's damages at forty-nine dollars and fourteen cents, and the said plaintiff moved for judgment upon the verdict, and the court, being fully advised in the premises, doth order and adjudge that the above-named plaintiff, William G. Langford, do have and recover of and from Charles E. Monteith, the above-named defendant, the possession of the premises hereinafter described, and one

hundred and forty-seven and $\frac{42}{100}$ ($147\frac{42}{100}$) dollars damages, and costs and disbursements, taxed at thirty-nine and $\frac{25}{100}$ dollars, and that a writ of restitution and execution issue herein.

20 The description of said premises are as follows: The building known as the "Agency office" and the yard enclosing it; the building known as "The agent's residence" and yard enclosing it; one barn known as "The agency barn," on the west side of Lapwai Creek, and adjacent yard; one barn known as "The agency barn" and adjacent yard on the east side of Lapwai Creek; all of said buildings and yards being situated near to Lapwai Creek and mills known as "The agency mills," and on the "Spaulding mission claim," in Nez Perce County, Territory of Idaho.

W. C. WHITSON,
Dist. Judge.

Judgment entered May 7th, 1875.

Filed May 7th, 1875.

21 *Motion in arrest of judgment.*

In the district court of the first district of Idaho Territory, in and for Nez Perce County.

W. G. LANGFORD, PL'T'FF,
vs.
C. E. MONTEITH, DEF'T. } May 5th, 1875.

And now comes the said defendant and moves the court to arrest judgment in said cause, and to set aside the verdict therein, for the following reasons:

1st. The complaint in said action is insufficient to support the verdict therein.

2nd. That said verdict is unsupported and unwarranted by the proofs in the case.

3rd. That said verdict is contrary to law and to the instructions of the court to the jury in said case.

JO. W. HUSTON AND
J. M. HOWE,
Att'ys for Def't.

Filed May 5th, 1875.

H. SQUIER, *Clerk.*

Service accepted by copy May 5th, 1875.

A. E. ISHAM,
Att'y for Pl'ff.

22 *Notice of appeal.*

In the district court of the first judicial dist. of Idaho Territory, in and for Nez Perce County.

W. G. LANGFORD, PL'T'FF,
vs.
C. E. MONTIETH, DEF'T.

Please take notice that the said def't in the above-entitled action hereby appeals to the supreme court of this Territory from the judgment therein made and entered in the said dist. court on the 7th day

of May, 1875, in favor of the said pl't'ff and against said defendant in said action, and from the whole thereof.

Lewiston, Nez Perce County, I. T., May 14th, 1875.

J. M. HOWE,
Att'y for Def't.

To the clerk of said dist. court and to J. Rand, att'y for pl't'ff.

Service of the within acknowledged "by copy" this 14th day of May, 1875.

(S'g'd) JASPER RAND,
For Pl't'ff.

Filed 14th of May, 1875.

H. SQUIER, *Clerk.*
D. J. WARNER,
Deputy Clerk.

23 *Appeal bond.*

In the district court of the first judicial district of Idaho Territory, in and for Nez Perce County.

W. G. LANGFORD, PL'T'FF, *vs.* C. E. MONTIETH, DEF'T. } Undertaking on appeal.

Whereas the defendant in the above-entitled action has appealed to the supreme court of the Territory of Idaho from a judgment made and entered against said defendant in the said district court in favor of the pl't'ff in the said action, on the 7th day of May, 1875, for the recovery of the possession of certain lands and premises therein described, and one hundred and forty-seven and $\frac{42}{100}$ dollars damages for the detention thereof, and thirty-nine and $\frac{25}{100}$ dollars costs of suit: Now, therefore, in consideration of the premises, and of such appeal, we, the undersigned, residents of the county of Nez Perce, and Territory of Idaho, do hereby jointly and severally undertake and promise on the part of appellant, that the said appellant will pay all damages and costs
24 which may be awarded against him on the appeal, not exceeding three hundred dollars, to which amount we acknowledge ourselves jointly and severally bound.

And whereas the appellant is desirous of staying the execution of the said judgment so appealed from, as to the said costs and damages, we do further, in consideration thereof, and of the premises, jointly and severally undertake and promise, and do acknowledge ourselves further jointly and severally bound in the further sum of three hundred and seventy-four dollars (being double the amount named in the said judgment for said costs and damages), that if said judgment appealed from, or any part thereof, in that respect be affirmed, the appellant shall pay the amount directed to be paid thereby, or the part of such amount as to which the same shall be affirmed, if affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal.

And whereas the appellant is desirous of staying the execution of the said judgment so appealed from in so far as relaste to the pos-
25 session of the said land and premises, we do further, in consideration thereof and of the premises, jointly and severally undertake

and promise, and do acknowledge ourselves further jointly and severally bound in the further sum of four hundred and sixteen dollars (being the amount for that purpose, fixed by the judge of this court), that during the possession of such property by appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the said judgment appealed from be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, not exceeding the said sum of four hundred and sixteen dollars, so as aforesaid fixed by the judge of this court, by which the said judgment was made and entered.

Lewiston, Nez Perce County, I. T., May 14th, 1875.

(S'g'd) C. P. COBURN.
" B. LOEWENBERG.

TERRITORY OF IDAHO,
County of Nez Perce, ss:

C. P. Coburn and B. Loewnberg, the sureties, whose names
26 are subscribed to the foregoing undertaking, being first duly sworn, says, each for himself, I am a resident of Nez Perce County, Idaho Territory; I am worth the amount in the above undertaking specified, over and above all my just debts liabilities, exclusive of property exempt from execution.

C. P. COBURN. [SEAL.]
B. LOEWENBERG, [SEAL.]

Subscribed and sworn to before me this 14th day of May, 1875.

HAZEN SQUIER,
Clerk of the 1st Judicial District of Idaho Territory,
By D. J. WARNER,
Deputy Clerk.

Filed and approved this 14th day of May, 1875.

(S'g'd) H. SQUIER, *Clerk,*
By D. J. WARNER, *Deputy.*

27 In the district court of the first judicial district of Idaho Territory, in and for Nez Perce County, April term, A. D. 1875.

Eleventh judicial day—Friday, April 30th, 1875.

W. G. LANGFORD, R'SP'T,
vs.
C. E. MONTIETH, APP'L'T.

This cause having been heard on motion on file herein by the appellant to dismiss said cause for want of jurisdiction of the justice' court wherein said cause was originally tried, the court having had the same under advisement, and being fully satisfied in the premises, overruled the motion.

* * * * * * *

Thirteenth judicial day.—Monday, May 3rd, 1875.

* * * * * * *

This cause coming on for trial, the court directed the clerk to draw a jury in the manner prescribed by law; whereupon the following named

persons were duly drawn, passed upon by the court and the counsel for the respective parties, impannelled, and sworn as a jury for the
28 trial of this cause, to wit: J. Kamey, M. Lydon, W. H. Wishard, J. Shultz, D. McElwee, J. Story, S. C. Thompson, J. McGrune, J. Braisley, A. Benson, J. M. Cuny, and G. A. Maimry. Thereupon the trial proceeded.

W. G. Langford, J. Ram, L. B. Boise, and D. P. Warner were duly sworn and examined as witnesses on the part of the respondent.

Whereupon the respondent rested.

The court, having admonished the jurors that they were neither to converse among themselves nor suffer any other person to converse with them or in their presence in regard to this case, adjourned until to-morrow morning at 9½ o'clock a. m.

* * * * * * *

Fourteenth judicial day.—Tuesday, May 5th, 1875.

* * * * * * *

This cause being resumed, the jury were first duly polled, and all being present, John B. Monteith was called and examined as a witness for the appellant, and the defense rested.

W. G. Langford, and P. Rand were called in rebuttal.

Now, at this time appellant filed a motion for nonsuit, which was overruled by the court, and counsel proceeded to make their argument.

At this time, the jury having been admonished that they were
29 neither to converse among themselves nor suffer any one to converse with them or in their presence in regard to this case, court adjourned until to-morrow morning at 9½ a. m.

* * * * * * *

Fifteenth judicial day—Wednesday, May 5th, 1875.

* * * * * * *

This cause having been resumed by consent of counsel with eleven jurors, and the arguments of the respective counsel having been heard, the court delivered its instructions to the jury in writing. Whereupon they retired to consider of their verdict, and in a short time came into court and returned the following verdict:

We, the jury, in the above-entitled case, find for the pl't'ff, and assess the damages at forty-nine $\frac{14}{100}$ ($49.14).

Lewiston, Idaho, May 5th, 1875.

(S'g'd) GEO. A. M.,
Foreman.

The jurors were then asked if this was their verdict, and each and all answered affirmatively. The jurors were then discharged.

Appellant filed a motion in arrest of judgment, which was submitted without argument, and overruled by the court.

* * * * * * *

30 Seventeenth judicial day—Friday, May 7th, 1875.

This cause having come on to be heard and been duly submitted to the court and jury, and the jury having found a verdict for the plaintiff and assessed his damages at forty-nine dollars and fourteen cents, and the plaintiff having moved that judgment be entered upon said verdict, and that said damages be trebeled as per statute provided, and the court

being fully advised in the premises, orders and adjudges that judgment be entered that plaintiff, William G. Langford, do have and recover from and of defendant, Charles E. Montieth, the possession of the premises described in the complaint and treble the damages found in said verdict, amounting to one hundred and forty-seven dollars and forty-two cents, and costs and disburs'ments, taxed at thirty-nine and $\frac{25}{100}$ dollars, and that writ of restitution and execution issue thereon.

(S'g'd) W. C. WHITSON,
Dist. Judge.

31 Seventeenth judicial day—Friday, May 7th, 1875.

W. G. LANGFORD, R'SP'D'T,
vs.
G. E. ALEXANDER, DEF'T.

This cause having come on to be heard, and the respective parties thereto having agreed in open court that the verdict in the case of William G. Langford, plaintiff, vs. Charles E. Monteith, defendant, heretofore tried in this court at the present term hereof, should be considered as rendered in this case "pro forma," except that the amount of damages assessed should not govern * * * *

W. G. LANGFORD, R'SP'D'T,
vs.
GEO. AINSLIE, APP'L'T.

Same entry as above.

W. G. LANGFORD, R'SP'D'T,
vs.
G. W. SWANK, APP'L'T.

Same entry as above.

32 W. G. LANGFORD, R'SP'D'T,
vs.
MONTGOMERY & HOUCK, APP'L'T.

Same entry as above.

(S'g'd) W. C. WHITSON,
Dist. Judge.

TERRITORY OF IDAHO,
County of Nez Perce:

I hereby certify the foregoing to be full, true, and correct copies of the following-named papers in this action, entitled W. G. Langford vs. C. E. Monteith, together with the journal entries in relation thereto, as they now appear of record in my office, to wit: Summons, complaint, answer, motion to dismiss, motion for nonsuit, judgment, motion in arrest of judgment, notice of appeal, appeal bond, and journal entries.

In witness whereof I have hereunto set my hand and affixed my official seal this 27th day of November, A. D. 1875.

[SEAL.] H. SQUIER,
Clerk 1st Jud'l Dist., I. T.

33 In the supreme court of Idaho Territory, at the January term, A. D. 1876. Saturday, January 15th, A. D. 1876.

CHARLES E. MONTEITH, APPELLANT,
vs.
W. G. LANGFORD, RESPONDENT. } Civil No. 8.

On appeal from the district court of the first judicial district in and for Nez Perce County.

And now, at this day, this cause being called and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, and understood, and fully considered, the opinion of the court herein is delivered by Associate Justice John Clark, to the effect that the judgment of the court below be reversed and the cause dismissed, and that appellant have judgment for his costs.

Whereupon it is now considered, ordered, adjudged, and decreed by the court here that the judgment of the district court of the first judicial district, in and for the county of Nez Perce, in the above-entitled
34 cause be, and the same is hereby, reversed and the cause dismissed, and that the appellant, Charles E. Monteith, have judgment against W. G. Langford, respondent herein, for his costs.

(To the ruling and decision of the court in said cause the respondent, by his counsel, then and there duly excepted.)

35. Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-seven.

WILLIAM G. LANGFORD, PLAINTIFF IN ERROR,
vs.
CHARLES E. MONTEITH, DEFENDANT IN ERROR.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said William G. Langford, by J. Brumback, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit: That by the record aforesaid it appears that the judgment aforesaid given was given for the said Charles E. Monteith, and against the said William G. Langford, reversing the judgment of the district court of the first judicial district of Idaho Territory; whereas by the law of the land the said judgment ought to have been given for the said William G. Langford and against the said Charles E. Monteith, affirming the judgment of said district court.

There is error in this, to wit: That none of the assignments of error in the supreme court of Idaho Territory are upon the record good and sufficient for the reversal of said cause by the said supreme court of Idaho Territory; but the judgment in said cause in the district court of said Territory should have been affirmed by the supreme court of Idaho Territory.

And the said William G. Langford prays that the judgment aforesaid of the supreme court of Idaho Territory may be reversed, annulled,
36 and altogether held for nought, and that the judgment of said district court may be affirmed, and that he may be restored to all

things which he hath lost by occasion of the said judgment of the supreme court of Idaho Territory.

J. BRUMBACK,
Attorney for Plaintiff in Error.

(Indorsed:) In Supreme Court United States. William G. Langford, pl'ff in error, vs. Charles E. Monteith, def't in error. Assignment of error. Filed Jan'y 17th, 1877. A. L. Richardson, clerk.

37 In the supreme court of Idaho Territory.

CHARLES E. MONTIETH, APPELLANT,
vs.
WILLIAM G. LANGFORD, RESPONDENT.

William G. Langford, being first duly sworn, deposes and says that he is the above-named respondent, and that he is the plaintiff in error in said cause in the Supreme Court of the United States; that the matter in dispute is the possession of certain real estate and property situated in Nez Perce County, Idaho Territory, and is more particularly described as follows: being a part of deponent's land purchased by him from the American Board of Commissioners for Foreign Missions, as appears from deponent's deed recorded in the recorder's office in the record of deeds in Nez Perce County, Idaho Territory. The part in dispute being the office-building, and the inclosed ground adjacent thereto, used as the agency office; the dwelling-house and the two barns, known as the barns of the agency, and grounds adjacent as yards. That said enclosed premises adjacent thereto, used as the agent's residence, and property was, at the time of the commencement of this action, and is now, of the value of two thousand dollars. That the possession thereof is of the same value, to wit, the sum of two thousand dollars. That either said property or its possession is of more than one thousand dollars' value, and that the matter in controversy is the possession of said property.

W. G. LANGFORD.

Subscribed and sworn to before me this 6th day of January, A. D. 1877.

A. L. RICHARDSON,
Clerk.

38 (Indorsed:) Supreme court, Idaho Territory. Charles E. Monteith, appellant, vs. William G. Langford, respondent. Affidavit showing amount in controversy. Filed January 6th, 1877. A. L. Richardson, clerk.

39 Supreme Court of the United States.

WILLIAM G. LANGFORD, PLAINTIFF IN ERROR,
vs.
CHARLES E. MONTEITH, DEFENDANT IN ERROR.

Know all men by these presents that we, William G. Langford and S. P. C. Howard, and Phillip Cleary, all of Idaho Territory, are held and firmly bound unto Charles E. Monteith, of Nez Perce County, Idaho Territory, in the sum of five hundred dollars, to be paid to the said Charles E. Monteith, his executors or administrators; to which pay-

ment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals; dated this 6th day of January, A. D. 1877.

40 Whereas the above-named William G. Langford hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of Idaho Territory:

Now, therefore, the condition of this obligation is such that if the above-named William G. Langford shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

W. G. LANGFORD. [SEAL.]
S. P. C. HOWARD. [SEAL.]
PHILIP CLEARY. [SEAL.]

Sealed and delivered in the presence of—
A. L. RICHARDSON.

Approved this sixth day of January, A. D. 1877.
M. E. HOLLISTER,
Chief Justice Sup. Ct. Idaho.

41 (Endorsed:) In Supreme Court United States. William G. Langford, pl'f't in error, vs. Charles E. Monteith, def't in error. Bond on writ of error. Filed Jan'y 17th, 1877. A. L. Richardson, clerk.

TERRITORY OF IDAHO,
County of Ida, ss:

I, A. L. Richardson, clerk of the supreme court of Idaho Territory, hereby certify the foregoing to be a full, true & correct copy of the original bond on writ of error in the above entitled action now on file in my office.

Witness my hand and the seal of said court, affixed at my office in Boise City, I. T., this 26th day of January, A. D. 1877.

[SEAL.] A. L. RICHARDSON,
Clerk.

42 *Bill of exceptions.*

In the supreme court Idaho Territory.

C. E. MONTEITH, APPELLANT,
vs.
WM. G. LANGFORD, RESPONDENT.

Bill of exceptions.

Be it remembered that this cause came on regularly to be heard in said court on the 10th day of January, A. D. 1876, before the Hon. M. E. Hollister, chief justice, and the Hon. John Clark, associate justice, presiding.

The cause was upon the record, consisting of the complaint with the lease thereunto annexed, the summons, answer, and judgment of the district court of the 1st judicial district of Idaho Territory, in and for Nez Perce County, and the following assignment of errors upon the part of the appellant, to wit:

43 The district court erred in entertaining said case for the reason that it is apparent upon the face of the pleadings that the justice of the peace had no jurisdiction to hear, try or determine said action, because—

"1st. The property for which restitution was claimed by the plaintiff was, as is shown by both the complaint and answer, upon an Indian reservation.

"2nd. It appears by the verified answer of defendant, that the title to real estate was involved in the action.

"3rd. The amount of stipulated damages in the lease was beyond the jurisdiction of a justice of the peace, being $3,000, and no waiver of further damages under the lease was filed in the case by plaintiff."

The cause was properly appealed from said district court to the supreme court of said Territory.

J. W. Huston, esqr., U. S. attorney for Idaho, appeared as counsel for appellant, and Brumback and Cahalan appeared as counsel for respondent.

44 After argument by the counsel for the respective parties the court took the cause under advisement until the 15th day of January, A. D. 1876, at which time the court rendered its decision to the effect that the judgment of said district court be reversed, and ordered judgment accordingly, to which decision of the court and order for judgment the respondent, Wm. G. Langford, by his counsel, then and there excepted, which exception was allowed by the court.

This bill of exceptions is signed, sealed, and ordered to be made of record in said cause.

Done in open court.

(Signed) M. E. HOLLISTER, *Ch. J.* [SEAL.]
JOHN CLARK, *Asso. J.*

45 (Endorsed:) Supreme court Idaho Territory. C. E. Monteith vs. W. G. Langford. Bill of exceptions. Filed Jan'y 29th, 1876. A. L. Richardson, clerk.

46 UNITED STATES OF AMERICA,
Territory of Idaho, ss:

I, A. L. Richardson, clerk of the supreme court of Idaho Territory, hereby certify that the foregoing contains a true copy of the record and proceedings in the case of Charles E. Monteith, appellant, against William G. Langford, respondent, lately decided in said court, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Boise City in said Territory, this 3rd day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] A. L. RICHARDSON, *Clerk.*

(Indorsement on cover:) No. 340. William G. Langford, pl'ff in error, vs. Charles E. Monteith. Idaho Territory supreme court. Filed 26th February, 1877.

C

OFFICE SUPREME COURT U. S.
FILED
FEB 11 1880
D. W. MIDDLETON, Clerk.

Supreme Court of the United States.

LANGFORD, PLAINTIFF IN ERROR,

vs.

CHARLES E. MONTEITH.

No. 111.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

This is error to the supreme court of the Territory of Idaho, because of the adjudication by that court adversely to the plaintiff in a case between the parties originally brought on the 4th of March, 1875, before a justice of the peace of said Territory, in and for the county of Nez Percé, for unlawful and forcible detainer of lands and tenements described in the complaint. (*Rec.*, *p.* 2.)

This complaint was brought under the statutes of Idaho (Revised Laws of 1874 and 1875) for unlawful and forcible detainer of lands by a tenant holding over, having obtained possession under a lease, which is annexed to the complaint, (*Rec.*, *p.* 3,) dated November 13, 1874.

The complaint sets up that by virtue of said lease defendant went into possession of said premises as tenant of plaintiff, and still continues in possession. That the term for which said premises were demised has terminated.

That by the terms of the lease the defendant agreed to deliver possession of premises to plaintiff on ten days' notice. That notice being given, expired on the tenth day of February, 1875, and demand was then made by the plaintiff in pursuance of the terms of notice for the delivery of possession of the premises to the plaintiff. That the defendant then and there refused to deliver possession of said premises, and forcibly detained the same, and continues to detain the same, contrary to the terms of the lease.

Upon this complaint a summons was issued to the defendant, who came in and answered the complaint, denying that the plaintiff ever leased or demised said premises to the defendant.

2d. Denies that he forcibly detains the same.

3d. Denies the value of the rental as alleged.

4th. For further answer avers that on the said day he did take from the said plaintiff an instrument in writing, purporting to be a lease of said premises, but that said instrument was made upon a misrepresentation of facts, said plaintiff asserting that he was the owner of said premises, which was not true, as this defendant upon information verily believes.

5th. That said lands, buildings, and premises is property belonging to the United States, situated within an Indian reservation forming no part of Idaho Territory, and to which the Indian title has never been extinguished.

6th. That said defendant entered upon said premises in and by virtue of being an employé of the United States, under the direction and control of John B. Monteith, Indian agent of said reservation, long prior to the giving of said instrument by said defendant to said plaintiff.

7th. That said defendant was in possession of said premises at the time of making said instrument, and was induced to yield said possession to said plaintiff by the misrepresentation of said plaintiff.

8th. The defendant further avers the Government of the United States, through the proper department, has issued orders to the military to maintain this defendant in possession of said premises against said plaintiff.

9th. That said military has and does maintain said defendant in possession; that such maintenance is not procured by the defendant, and that he is not permitted to yield said possession to said plaintiff. (*Rec.*, *pp.* 4 *and* 5.)

This answer filed in the justice's court, March 10, 1875.

This cause, with others of like kind, seems to have got from the justice's court into the district court, because the complaint and answer seem to have been filed therein on the first day of April. On the 21st day of April, 1875, Houston and Howe, attorneys for defendants and appellants, moved in that court to dismiss the said actions and set aside the judgment rendered therein in the justice's court, for the reason that the justice's court had no jurisdiction in said action. (*Rec.*, *p.* 6.)

On the 30th of April the record finds that the cause having been heard on a motion on file herein, defendants moved the court to dismiss said cause for want of jurisdiction of the justice's court wherein the cause was originally tried. The court overruled the motion. (*Rec.*, *p.* 9.)

On the 3d of May the cause came on for trial, and the court directed the clerk to draw a jury.

On the 4th of May, (*Rec.*, *p.* 6,) while the case was yet before the jury, the defendant moved the court for a nonsuit, on the following grounds:

1st. The complaint does not state facts sufficient to support a verdict.

2d. That the proof on the part of the plaintiff does not sustain the complaint.

On the 5th of May, while the case was still before the jury, the appellant filed a motion for a nonsuit. Upon what ground does not appear. (*Rec.*, *p.* 10.)

The judge having given instructions to the jury in writing, which instructions do not appear, the jury returned a verdict for the plaintiff and assessed damages in the sum of $49.14. (*Rec.*, *p.* 10.)

The defendant filed a motion in arrest of judgment, which was submitted without argument and overruled by the court. That motion in arrest of judgment appears on page 7 of the Record, and is for the following reasons:

First. The complaint in said action is insufficient to support the verdict therein.

Second. The verdict is unsupported and unwarranted by the proofs of the case.

Third. That said verdict is contrary to law, and to the instructions of the court to the jury in said case.

On the 7th of May the plaintiff moved that judgment be entered upon said verdict, and that said damages be trebled as by statute provided; and the court, being fully advised in the premises, orders and adjudges that judgment be entered that the plaintiff Langford recover the possession of the premises described in the complaint and treble the damages found in said verdict, with costs, and that writ of restitution and execution issue thereon. (*Rec.*, *pp.* 10 *and* 11.)

On the 7th of May an extended judgment was entered and filed, describing the premises of which restitution was to be granted. (*Rec.*, *p.* 7.)

On the 14th of May notice was given that appeal had been taken to the supreme court of Idaho. (*Rec.*, *pp.* 7 *and* 8.) On the 10th of January, 1876, the case came on to be heard before chief-justice and an associate justice of the supreme court of Idaho, upon the following bill of exceptions:

"The cause was upon the record consisting of the complaint, with the case thereunto annexed, the summons, answer, and judgment of the district court of Idaho, and the following assignment of errors on the part of the appellant, to wit:

"That the district court erred in entertaining said case, for the reason that it is apparent on the face of the pleadings that the justice of the peace had no jurisdiction to hear, try, and determine said action, because—

"1st. The property for which restitution was claimed by the plaintiff was, as is shown by both complaint and answer, upon an Indian reservation.

"2d. It appears by the verified answers of the defendant that the title of the real estate was involved in the action.

"3d. The amount of the stipulated damages in the lease was beyond the jurisdiction of the justice, being $3,000, and no waiver of further damages under the lease was filed in the case by plaintiff."

Upon this bill of exceptions the judgment was that the judgment of said district court be reversed, and judgment ordered accordingly, to which order Langford, by his counsel, then and there excepted, which exception was allowed by the court. (*Rec., pp.* 14, 15.) Whereupon Langford filed an affidavit, showing the amount in controversy, sued out his writ of error to the Supreme Court of the United States, and filed the necessary bond, which was approved by the chief-justice of the supreme court of Idaho, (*Rec., pp.* 13, 14,) and at the October term filed his

ASSIGNMENT OF ERRORS

that there is error in this, to wit:

"That none of the assignments of errors in the supreme court of Idaho Territory are upon the record good and sufficient for the reversal of said cause by the supreme court of Idaho Territory; but the judgment in said cause in the district court of said Territory should have been affirmed by the supreme court of Idaho Territory."

The record, from the manner of making it having been somewhat involved, this full diegesis of it is made for the convenience of the court.

THE POINTS RAISED BEFORE THE SUPREME COURT OF IDAHO.

It does not appear by the record upon what ground the supreme court of Idaho put their decision. The three grounds upon which it was asked were:

1st. That the property for which restitution was claimed by the plaintiff was, as is shown by both complaint and answer, upon an Indian reservation.

2d. It appears by the verified answer of the defendant that the title to real estate was involved in the action.

3d. That the amount of stipulated damages in the lease was beyond the jurisdiction of a justice of the peace, being $2,000, and no waiver of further damages under the lease was filed in the case by plaintiff.

It will be convenient to deal with the last two grounds of assigned error in the supreme court of Idaho at first.

That no waiver had been filed in excess of the jurisdiction of the justice of the peace is a mistake of the fact, because it appears upon page 2 of the record that in the complaint the weekly value of the rents and profits is set out at fifteen dollars only, and the amount claimed was the sum of forty-five dollars per week. So the sum does not exceed on the day of the trial before the justice one hundred dollars, exclusive of costs and disbursements.

Again, it is a misapprehension of fact that the stipulated damages set out in the lease are for rent only, or for retaining possession. They are simply stipulations for the full performance of the covenants and agreements against sub-letting or delivering up the possession of the premises to any other person, and are not damages in lieu of rent, and are expressly waived when nothing but the restitution of the premises and weekly damages for the detention thereof is claimed.

Again, by the statutes of Idaho, (*Rev. Stats.*, 1874–'75, *p.* 209, *chap.* 41,) under which this trial was had, it is pro-

vided that when any complaint shall be made in writing to a justice of the peace of any unlawful detainer the justice shall issue a summons, directed to the sheriff, commanding him to summons the person or persons against whom such complaint shall be made.

And by section 590, p. 214, the form of the summons is prescribed, which form has been carefully followed in the present case, (*Rec., p.* 3.) *But there is no prescribed form of complaint.*

This suit not being for rent, but only for forcible detention, and for damages for forcible detention, the stipulated damages have no effect upon it, because by section 581 (Rev. Stats. of Idaho, p. 211) it is provided that "in all cases of verdict by a justice of the peace the damages shall be assessed as well for waste and injury committed upon the premises as for the rents and profits during such detainer. And the verdict shall also find the monthly value of the rents and profits of said premises.

The *second* error assigned is that it appears by the verified answer of the defendant that the title to real estate was involved in the action. That answer contains these denials:

1st. That the plaintiff leased.

2d. That the defendant forcibly detained.

3d. That the weekly rental is any sum.

4th. Avers that the lease was obtained by fraud.

5th. That said lands, premises, and property belong to the United States situated in an Indian reservation to which the Indian title has never been extinguished.

That averment is not a plea of title in the party pleading.

6th. That the defendant entered upon the premises by virtue of being an employé of the United States prior to the giving of said instrument by the defendant.

7th. That the defendant was in possession at the time of

making said instrument, and was induced to yield such possession to the plaintiff upon misrepresentation of said plaintiff.

8th. That the Government of the United States had issued orders to the military to maintain the defendant in possession.

9th. That the military had so done.

The case finds that all those averments had been negatived by the verdict of a jury under proper instructions not excepted to in the district court.

It is also submitted that the defendant's answer does not raise a question of the title; nor is the question of title necessarily involved by the defendant's answer, because by section 578, *Ibidum:*

"On the trial the plaintiff shall only be required to show, in addition to the forcible detainer complained of, that he was entitled to the possession of the premises at the time of the forcible holding over. And the defendant may show in his defence that he or his ancestors, or those whose interest in such premises he claims, have been in quiet possession thereof for the space of one whole year together next before said inquisition; and that his interest is not then ended or determined; and such showing shall be a bar to the prosecution; and in no case when the title of land is necessarily involved shall a justice of the peace have cognizance."

Now, the possession of the tenant is the possession of the landlord, and the lease was dated on the 13th day of November, 1874, and the complaint was filed on the 4th day of March, 1875. But the answer does not show that the defendant had been in possession one whole year even before the lease was given. He says "he entered long prior to the giving of said instrument by said defendant to said plaintiff." (*Rec., p.* 5.) So there was no averment of title in himself, or of that quiet possession as this section of the statute requires.

The same section of the statute further provides that "in

no case, when the title of land is necessarily involved, shall a justice of the peace have cognizance." The error assigned is that the defendants' answer shows that the title is involved. Not necessarily, because the rightful possession is the only thing to be inquired into, and the possession of the tenant is the possession of the landlord, and the tenant cannot set up title in himself for another until he delivers up possession. (Woodward *v.* Brown, 13 Pet., 1.) Certainly not until he shows an ouster.

The *first* assignment of error is that the property was, as is shown by both the complaint and answer, upon an Indian reservation.

Again, this assignment is a mistake of fact. The complaint does not show it to be upon an Indian reservation. It shows that it is in the county of Nez Percé, in the Territory of Idaho, and that the buildings and grounds had been *formerly* used as Indian agency buildings and grounds, but whether upon an Indian reservation is not shown. This question raised by the answer is negatived by the verdict of the jury found under proper unexcepted-to instructions.

This court, nor the supreme court of Idaho, cannot know without evidence whether the buildings and grounds situated "near to and on the east and west side of Lapwai creek, near the mill formerly known as the Agency mill, is on an Indian reservation." "Buildings formerly occupied as an Indian Agency" is by no means equivalent to a statement that the property is on an Indian reservation.

The averments of the answer, negatived by the findings of the jury, are certainly not a ground for reversing a judgment.

But let us assume, *causa argumenti*, that the premises are situated within an Indian reservation. Is that, necessarily, a bar to a complaint of possession between landlord and tenant?

If so, it must be because no white man, either by law or treaty, can own or possess any land within the limits of an Indian reservation.

Or because the organic act establishing the Territory (12 Stat., chap. 117, p. 809) takes, excludes the jurisdiction of her courts over such real property. There is nothing in any statute of the United States to that effect, and nothing in the treaties with the Nez Percé Indians by which this reservation was so limited. Of the existence of such statute we are not advised.

The first treaty with the Nez Percé Indians was dated June 11, 1855, (12 *Stats. at Large, p.* 957,) by section first of which the Nez Percé tribe "cede, relinquish, and convey to the United States" all their right, title, and interest in and to the country occupied and claimed by them, bounded and described as follows: The description embracing the country within which is Lapwai creek and the *locus de quo.*

By the second section there is reserved "as a general reservation for other friendly tribes of Indians a tract of land embracing the *locus de quo*, all which tract shall be set apart and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said tribe as an Indian reservation." "Nor shall any white man, *excepting* those employed by the Indian department, be permitted to reside on the reservation *without the consent of the tribe and the superintendent and agent.* In the meantime it shall be lawful for the Indians to reside upon any ground not in the actual claim and occupation of citizens of the United States."

And by the 10th article of said treaty, "the Nez Percé having expressed in council a desire that William Craig shall continue to live with them, he having uniformly shown himself their friend, it is further agreed that the tract of land now occupied by him, and described in his notice to the register and receiver of the land office of the Territory

of Washington on the fourth day of June last, *shall not be considered a part of the reservation* provided for in this treaty, except that it shall be subject in common with the lands of the reservation to the operation of the intercourse act."

Now, it does not appear but what the *locus de quo* is held by the defendant in error, Langford, directly under William Craig, which is not a part of the reservation, although within its limits.

Nor, indeed, does it appear in the complaint that William Langford was not an Indian himself, who by the sixth article of the treaty may have had assigned to him a "lot," the provision being, "that the President may cause the whole or such portion of such reservation to be surveyed and divided into lots, and assign the same to such individuals or families of the said tribe as are willing to avail themselves of the privilege, and are willing to locate on the same as a permanent home, on the same terms and subject to the regulations provided by article six of the treaty with the Omahas in the year 1854, so far as the same may be applicable."

That treaty is found on page 1044 of volume 10 of the Statutes at Large, and provides for surveying into lots, and assigning to such Indians as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, certain portions of the land in severalty. And the President may at any time grant the person who has made a location of land assigned for a permanent home a patent, conditioned that the tract shall not be aliened or leased for a longer term than *two years*.

There are still other provisions of the treaty which exclude the idea that one cannot maintain his possession of land simply because it is within the limits of the Nez Percé reservation.

The next treaty with the Nez Percé Indians was June

9, 1863. (14 *Statutes at Large*, *p.* 647.) This treaty makes a new reservation of different boundaries, but which includes the *locus de quo*, and provides in terms, by article 3d, that every male person of the tribe who shall attain the age of twenty-one years, or the head of a family, shall have the privilege of locating on one lot as a permanent residence, and hold the lands in severalty.

And by article 8 it is agreed that upon the public roads that run across the reservation, with the tribe's consent, there may be established, at such points as may be necessary for the public convenience, hotels or stage stands, of the number and necessity for which the agent or superintendent shall be the sole judge, who shall be competent to license the same, with the privilege of using such amount of land for pasturage and other purposes connected with such establishment as the agent or superintendent shall deem necessary; it being understood that such lands for pasturage are to be enclosed, and the boundaries thereof described in the license.

Article 9 prescribes that "a piece of land between the Snake and Clearwater rivers, the same having been given to him on the 9th day of June, 1861, and described in an instrument of writing, bearing that date, to Robert Newell; and that he shall receive from the United States a patent for said land."

By turning to article second it will be seen that Lapwai creek is between Snake and Clearwater rivers. It does not appear, therefore, that the *locus de quo* is not Newell's piece of land, or that it is not the site of a duly licensed hotel, and the land included within the boundaries thereof.

Another treaty was made on the 24th of February, 1869, (15 *Stats. at Large*, *p.* 695,) article first of which provides for still another form of reservation: That all lands embraced within the reservation of the treaty of June 9, 1863, which "are not now occupied by the United States for mili-

tary purposes, and are not required for agency buildings and other purposes," shall be surveyed and allotted as provided in the 3d article of said treaty.

If the *locus de quo* were agency buildings, this treaty would seem to put it outside of the reservation as belonging to the United States, and *non constat;* but Langford had a patent from the United States for this very agency-land, as in fact he has a title from the United States of this as the mission lot of the American Board of Foreign Missions by organic act establishing Oregon Territory, (9 Stat., p. 323, chap. 177, § 1,) and the act establishing the Territory of Washington, (acts of 1853, 10 Stat., chap. 90, § 1, p. 171,) before the first treaty was made with the Nez Percé tribe, if it were possible to discuss such a question upon the face of the complaint only.

Does the organic act of Idaho Territory exclude this land from the jurisdiction of its courts?

The boundaries of the Territory embrace the reservation only. (12 Stat., p. 809.) The restrictions are: First. "That nothing in this act shall be construed to impair the rights of persons and property now pertaining to the Indians on said Territory." Second. "Or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory."

We are not within either restriction. We do not seek to impair the rights of any Indian to his property. There is no treaty stipulation that the *locus de quo* shall not be included or put under the jurisdiction of the Territory. It is within one of its counties. Is it possible that the white men living on the lands in said county, which we have seen they lawfully own and possess, can have no legal redress as against one another for wrongs done in any court of the United States?

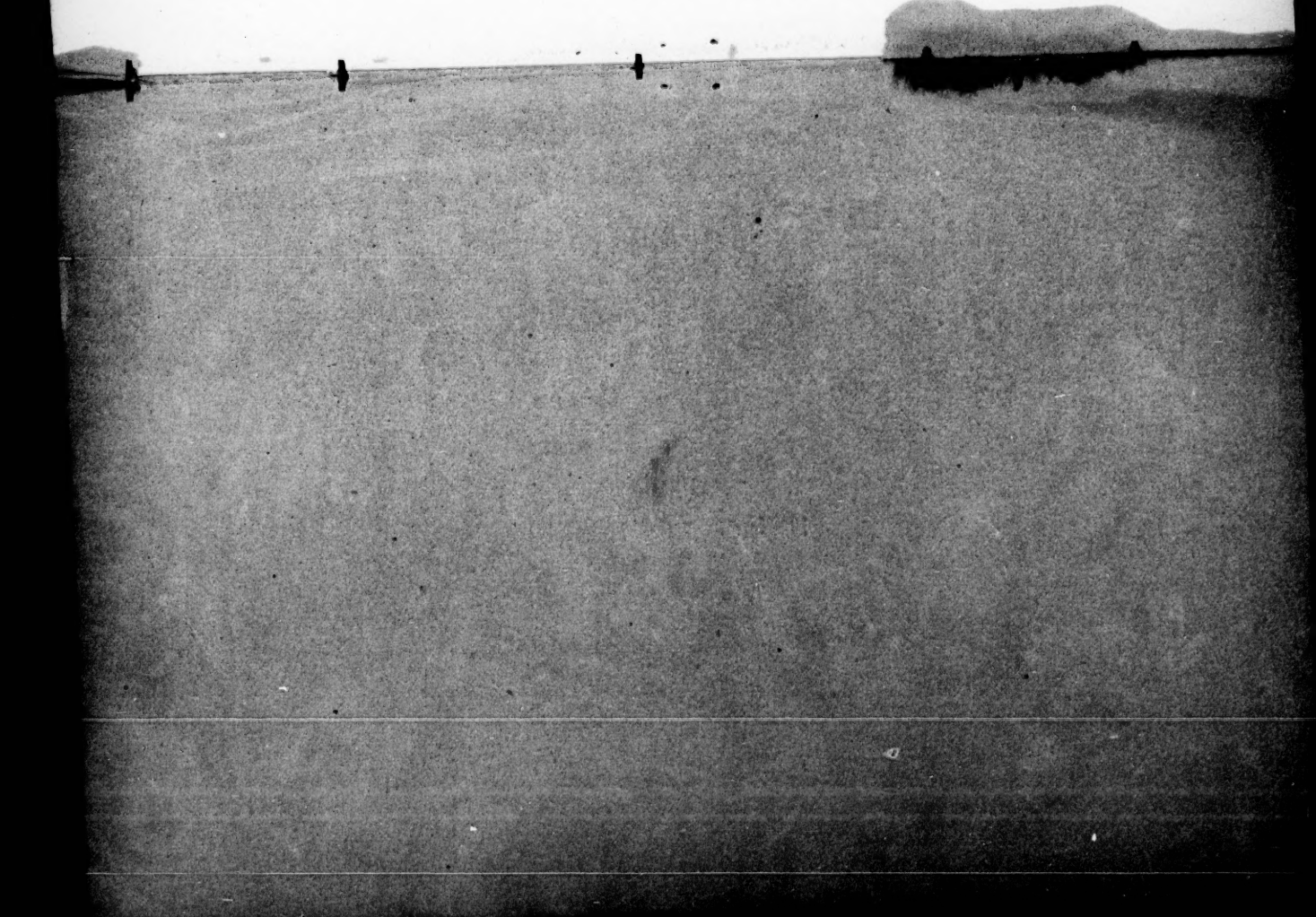
BENJ. F. BUTLER,
of Counsel.

OFFICE SUPREME COURT U. S.
FILED
MAR 30 1880
D. W. MIDDLETON, Clerk.

In the Supreme Court of the United States.

WILLIAM G. LANGFORD, PLAINTIFF IN ERROR,
v.
CHARLES E. MONTEITH.
} No. 111.

BRIEF FOR DEFENDANT IN ERROR.



In the Supreme Court of the United States.

WILLIAM G. LANGFORD, PLAINTIFF IN error
v.
CHARLES E. MONTEITH.
No. 111.

BRIEF FOR DEFENDANT IN ERROR

HISTORY OF THE CASE.

William G. Langford, on the 15th February, 1875, brought suit before a justice of the peace, of the county of Nez Percé, Territory of Idaho, to recover from Charles E. Monteith certain premises and treble damages, alleging that the said Monteith took possession of the premises under a lease from him, dated November 13, 1874 (pp. 3 and 4). To this the defendant answered (pp. 4 and 5):

1. Denying that plaintiff at any time let to defendant any premises in Nez Percé County, Idaho, or any county in said Territory.

2. Denying forcible detention.

3. Denying that the weekly rental is $15 or any other sum.

4. That on said day of November he did take from

said plaintiff an instrument in writing, purporting to be a lease of said premises, but that such instrument was made upon misrepresentation of fact, said plaintiff asserting that he was the owner of said premises, which was not true, as this defendant upon information verily believes.

5. That said lands, buildings, and premises is property belonging to the United States, situated within an Indian reservation forming no part of Idaho Territory, and to which the Indian title has never been extinguished.

6. That said defendant entered upon said premises, in and by virtue of being an employé of the United States, under direction and control of John B. Monteith, Indian agent for said reservation, long prior to the giving of said instrument by said defendant to said plaintiff.

7. That said defendant was in possession of said premises at the time of making said instrument, and was induced to yield such possession to said plaintiff, upon misrepresentation of said plaintiff.

8. Defendant further avers, the Government of the United States, through the proper department, has issued orders to the military to maintain this defendant in the possession of said premises against said plaintiff.

9. That said military has and does maintain said defendant in said possession; that such maintenance is not procured by this defendant, and that he is not permitted to yield said possession to said plaintiff.

This answer, duly verified, was filed before the justice on the 10th March (p. 5), and on the 1st April, 1875, the complaint, summons, and answer were filed with the clerk of the district court of the first district of Idaho, in and for Nez Percé County (pp. 3, 4, and 5).

The record transmitted to the supreme court of Idaho

does not contain a copy of the docket entry of the justice nor of the judgment of said justice's court, but the minutes, motions, and records in the district court are, we think, sufficient to warrant the conclusion that after the answer of Monteith was filed the justice went on to hear the case and enter judgment for plaintiff, and that the case was removed to the district court by appeal.

Monteith, on the 21st April, moved the court to dismiss the action from the court, and to set aside and annul the judgment rendered therein in the justice's court, for the reason that the said justice had no jurisdiction of said action (p. 6).

The motion was overruled, and on the 3d of May, 1875 a jury was sworn upon the complaint, and answer originally filed before the justice (p. 9).

John B. Monteith, Indian agent for the reservation, through whom defendant in his answer claimed under the United States, was the only witness examined for defendant (p. 10).

The jury found for the plaintiff and assessed the damages at $49.14 (p. 10); judgment was entered thereon that plaintiff have and recover from defendant, Charles E. Monteith, possession of the premises and treble damages (p. 11).

On the 14th May defendant gave bond and appealed from said judgment to the supreme court of the Territory of Idaho; and such proceedings were had that the supreme court of the Territory of Idaho reversed the judgment below and dismissed the cause (p. 12). A bill of exceptions was sealed in the supreme court of the Territory, but it does not appear that any exceptions were taken in the court below, either to admission of evidence or to the instructions of the court.

The case was argued by appellant in the court above upon but one assignment of error, to wit, that it was apparent from the face of the pleadings that the justice of the peace had no jurisdiction (pp. 14 and 15).

It further appears from this bill of exceptions that J. W. Huston, esq., who appeared in the supreme court for the appellant, and who had conducted the defense from the appearance of the cause in the district court, was United States attorney for Idaho (p. 15).

On the 5th January, 1877, Langford took out a writ of error from this court to the supreme court of Idaho, and on the 6th filed with the clerk of said court an affidavit "that either said property or its possession is of more than one thousand dollars value, and that the matter in controversy is the possession of said property," (p. 13).

ARGUMENT.

The argument of the plaintiff in error takes for granted that the justice entered judgment, his contention being to negative Monteith's assignment of error in the supreme court of Idaho, to wit: "that the justice of the peace had no jurisdiction to hear, try, or determine said action."

I.

It is contended by the defendant in error that the answer filed before the justice raised the question of title, and rendered null and void all subsequent proceedings in the case.

The act to regulate proceedings in civil cases in the courts of justice in Idaho Territory (approved January 15, 1875) provides:

SEC. 347. The parties shall not be at liberty to give evidence by which the question of title to real property shall be raised on the

trial before a justice, and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant verified by his oath, or that of his agent or attorney, that the determination of the action will necessarily involve the decision of a question of title to real property, the justice shall suspend all further proceedings in the action and certify the pleadings, or, if the pleadings be oral, a transcript of the same from his docket to the district court of the county, and from the time of filing such pleadings or transcript with the clerk the district court shall have over the action the same jurisdiction as if it were originally commenced therein.

Reading sections 578 (quoted in plaintiff's brief), 582, 583 and 347 together, the meaning seems to be this:

Plaintiff must prove his right of possession, and, having done so, the only evidence which defendant might offer *before the justice* would be prescription for one year. He could not give evidence to question plaintiff's right of possession without having first filed a plea; and having so pleaded, the jurisdiction of the justice *ipso facto* ceased.

The learned counsel for plaintiff in error seems to treat section 578 as precluding defendant from any defense except prescription, and as depriving him of the right in any forum to rebut plaintiff's *prima-facie* proof of right to possession.

Whether or not the answer averred one year's quiet possession becomes immaterial if it appears from the answer that "the determination of the action will necessarily involve the decision of a question of title to real property."

And we think the denial of plaintiff's ownership and the assertion of ownership in the United States, under whom defendant entered, is sufficiently explicit as to the purpose of the defendant to do exactly what section 347

forbids, to wit, to offer evidence at the trial which would raise the question of title to real property.

But it is contended by plaintiff in error, under the authority of Woodward *v.* Brown (13 Pet., 1), that because the complaint set out a lease the defendant would not be at liberty to offer evidence affecting plaintiff's title, and for that reason the prohibition in section 347 against evidence raising title would not come into play, and therefore the answer did not oust the jurisdiction of the justice.

The first paragraph of defendant's answer denies the lease, and the fourth, admitting that he took a paper purporting to be a lease, denies it to have that force, because taken on the misrepresentations of plaintiff, and the seventh alleges that defendant was in possession at the time he took the instrument, and the sixth asserts that such possession was under a third person and had continued for a long time prior to the making of the instrument in question.

Had the case been pending on such pleadings in a court of unqualified jurisdiction, clearly the defendant might have offered evidence to show that, being already in possession as tenant to A., Langford by false representations induced him to take the lease in question.

The utmost determined by Woodward *v.* Brown was that the landlord's right of action was not to be defeated by an attornment *subsequent* to the lease. Applying the principle there laid down to the allegations of the case in hand, if the United States or John B. Monteith had brought ejectment against C. E. Monteith he could not have set up the lease from Langford. And it would seem to follow as corollary that in an action by Langford, in which C. E. Monteith was defendant, John

B. Monteith or A The United States might appear and defend, and in doing so the lease from Langford would have no greater force against them as defendants than it would have if they were plaintiffs and Langford was appearing to defend. See Willeson *v.* Watkins, 3 Pet., 43, Byrne *v.* Beeson, 1 Douglass (Michigan) 179, and cases there cited.

II.

But, independent of this question, we contend that the jurisdiction of the justice was ousted the moment the defendant filed a verified answer denying the lease and asserting title in the United States. It is clear from the pleadings that the possession attempted to be assailed was that of the United States, and that not only the justice was without jurisdiction, but, even if trial had been suspended by him and the case certified, the district court was equally without jurisdiction. (Carr *v.* The United States, 98 U. S. 433.)

CHARLES DEVENS,
Attorney-General.
JOHN S. BLAIR.

Proof

Oct 20. 1880 [illegible]

12-148

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~289~~. 33

LAURENCE G. GRAHAM AND DONALD D. SCOTT, APPELLANTS,

vs.

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE AND SAINT PAUL RAILWAY COMPANY, JAMES LUDINGTON, EPHRAIM MARINER, JAMES KNEELAND, ADMINISTRATOR OF THE ESTATE OF MOSES KNEELAND, DECEASED, SARAH O. CHANDLER, ELLEN C. SEXTON, FRANCES FLINT, AND MOSES BURR KNEELAND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED OCTOBER 13, 1877.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

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1 Circuit court of the United States of America for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the eastern district of Wisconsin, begun and held according to law at the city of Milwaukee on the first Monday (being the third day) of January, A. D. 1876. Present, the honorable Thomas Drummond, circuit judge, presiding; Charles S. Hamilton, marshal, and Edward Kurtz, clerk. Among other the following proceedings were had, to wit:

LAWRENCE G. GRAHAM & DONALD D. SCOTT, complainants,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, JAMES LUDINGTON, JAMES KNEELAND, administrator of the estate of MOSES KNEELAND, dec'd, EPHRAIM MARINER, THE MILWAUKEE & ST. PAUL RAILWAY COMPANY, SARAH A. CHANDLER, ELLEN C. SEXTON, FRANCES FLINT, and MOSES BURR KNEELAND, defendants. } In equity.

Be it remembered that heretofore, to wit, on the 2nd day of June, A. D. 1860, came the above-named complainants by their solicitor,
2 Mr. Carpenter, and filed their bill of complaint in the district court of the United States for the district of Wisconsin against The La Crosse & Milwaukee Railroad Company, Moses Kneeland, James Ludington, Ephraim Mariner, Byron Kilbourn, & Selah Chamberlain, as follows:

Bill of complaint.

To the judge of the district court of the United States for the district of Wisconsin, in equity:

Lawrence G. Graham & Donald D. Scott, of the State of Wisconsin, who are aliens and subjects of Victoria, Queen of the Kingdom of Great Britain & Ireland, bring this their bill against the La Crosse & Milwaukee Railroad Company, a corporate body created and existing by and under the laws of the State of Wisconsin, and a citizen of the State of Wisconsin, and Moses Kneeland, James Ludington, Ephraim Mariner, & Byron Kilbourn, who are citizens of the State of Wisconsin, and reside in said State of Wisconsin, and Selah Chamberlain, a resident and citizen of the State of Ohio.

And thereupon your orators complain and say that heretofore, to wit, on the 21st day of September, A. D. 1858, in the circuit court of the second judicial circuit of the State of Wisconsin in and for the county of Milwaukee, at the court house in the city of Milwaukee in said county, by the consideration and judgment of said court your orators recovered against the said La Crosse & Milwaukee Railroad Company the sum of eleven thousand one hundred and eighty-eight dollars and eleven cents,
3 which in and by the said court was then and there adjudged to your orators for the damages which they had sustained as well by reason of the non-performance of the said company defendant of certain promises and undertakings then lately made by the said company defend-

ant as for their costs and charges by them about their suit in that behalf expended, which were adjudged to your orators in and by said court, whereof the said company defendant was convicted on the day and year aforesaid, as by the record and proceedings of said judgment remaining in said court, before the judge thereof, at the city of Milwaukee aforesaid, reference being thereto had, and to which for greater certainty, your orators pray leave to refer, will more fully and at large appear.

And your orators further show unto your honor that heretofore, to wit, on the 25th day of November, A. D. 1858, in the circuit court of the second judicial circuit of the State of Wisconsin in and for the county of Milwaukee, at the court-house in the city of Milwaukee, in said county, by the consideration and judgment of said court your orators recovered against the said La Crosse & Milwaukee Railroad Company the sum of twenty nine thousand eight hundred and twenty dollars and seventy-one cents, which in and by said court was then and there adjudged to your orators for the damages which they had sustained as well by reason of the non-performance by the said company defendant of certain promises and undertakings then lately made by the said com-

pany defen lant as for their costs and charges by them about their
4 suit in that behalf expended, which was adjudged to your orators in & by said court, whereof the said company defendant was convicted on the day and year last aforesaid, as by the record and proceedings of said judgment remaining in said court, before the judge thereof at the city of Milwaukee aforesaid, reference being thereto had, and to which for greater certainty your orators pray leave to refer, will more fully and at large appear.

And your orators further show unto your honor that each of said judgments so as aforesaid recovered remaining in full force and unpaid, and the whole amounts thereof remaining unpaid and unsatisfied, your orators on or about the 26th day of November, A. D. 1859, for the purpose of obtaining satisfaction of said judgments, sued and prosecuted out of said circuit court a writ of execution on each of said judgments, directed to the sheriff of said county of Milwaukee, by which said writs the said sheriff was commanded and directed that of the goods and chattels of the said La Crosse & Milwaukee Railroad Company, defendant, in his county, he should cause to be made the sums aforesaid, recovered as aforesaid by your orators, and that if sufficient goods and chattels could not be found, then to cause the said amounts to be made of the lands and tenements of the said company defendant, which it had in his said county on the days of the dates of the docketing of the said judgments respect-

ively, or at any time thereafter, and was afterwards, to wit, on the
5 26th day of November, A.D.1859, delivered to the said sheriff of the said county of Milwaukee to be executed in due form of law, and that afterwards, to wit, on the 29th day of November, A. D. 1859, the said sheriff levied said writ of execution upon certain property and real estate situate and being in the city and county of Milwaukee in said district, to wit, at the city of Milwaukee in said district, and hereinafter particularly described.

And your orators further show unto your honor that heretofore, to wit, on the 11th day of January, A. D. 1860, in the district court of the United States for the district of Wisconsin, by the consideration and judgment of said court, your orators recovered against the said La Crosse & Milwaukee Railroad Company, defendant, a certain debt of forty-four thousand three hundred and ninety-two dollars and thirty-two cents, and also twenty dollars and eighty-six cents for the damages which your orators had sustained as well by reason of the detaining of

the said debt as for their costs and charges by them about their suit in that behalf expended, which were adjudged to your orators in and by said court, whereof the said company defendant were convicted on the day and year last aforesaid, as by the record of said judgment in the office of the clerk of said court, reference being thereto had, and to which for greater certainty your orators pray leave to refer, will more fully and at large appear, which debt so recovered as last aforesaid is the same debt embraced in said two judgments so recovered in
6 said circuit court as aforesaid, and said last judgment was rendered upon said two former judgments.

And your orators further show unto your honor that the said judgment so recovered as last aforesaid remaining in full force unpaid and unsatisfied, your orators on or about the 26th of January, A. D. 1860, for the purpose of obtaining satisfaction of said judgment, sued and prosecuted out of said district court a writ called a writ of fieri facias, directed to the marshal of said district of Wisconsin, by which said writ the said marshal was commanded that of the goods & chattels of the said La Crosse & Milwaukee Railroad Company, defendant, in his district, he should cause to be made the sum aforesaid, recovered as aforesaid by your orators; and that if sufficient goods and chattels could not be found, then to cause the said amount to be made of the lands & tenements of said company defendant, which it had at the time of docketing said judgment, to wit, on the 11th day of January, A. D. 1860, or at any time thereafter, and was afterwards, to wit, on the 26th day of January, A. D. 1860, delivered to said marshal to be executed in due form of law; and that afterwards, to wit, on or about the 27th day of January, A. D. 1860, the said marshal levied said writ of fieri facias upon the following described property and real estate, situate and being in the city and county of Milwaukee, in said district, to wit, at the city of Milwaukee, in said district, that is to say, lots one, two, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, & fourteen, in block
7 one hundred and fifty-five; lots one & four in block one hundred and fifty-six; also the undivided one-half part, except lot eight, of block one hundred and fifty-seven; also the bayou adjoining the said last mentioned block, and thence running to the Milwaukee River; also the undivided one-third parts of lots eight, nine, sixteen and seventeen, in block one hundred and fifty-eight; also lots ten, twelve, thirteen & fourteen, and the east half of lot fifteen in block one hundred and fifty-eight, all in the 4th ward; also lots nine, ten & eleven, in block three, and lots one, two and three, in block forty-seven, in the 5th ward of the city of Milwaukee, all of which said lands and property was then and there, to wit, at the time of said levys, situated in said district of Wisconsin, and were the lands and property of the said La Crosse & Milwaukee Railroad Company, subject to levy and execution or fieri facias, in manner and form aforesaid.

And your orators further show unto your honors that the whole of the said judgment yet remains unpaid and unsatisfied, and that said judgment remains in full force, unreversed, and unannulled, and that no part of said judgment has been paid to your orators, but that to pay the same the said company defendant ever has and still does neglect and refuse, and your orators show that there is now equitably and actually due to your orators on said judgment the sum of forty-four thousand four hundred and thirteen dollars and eighteen cents, together with interest on the sum of forty-four thousand three hundred and ninety-two dollars and thirty-two cents thereof from the day of the rendition
8 of the said judgment as aforesaid, over and above all just claims

of the said La Crosse and Milwaukee Railroad Company defendant, by way of offset or otherwise, and that this bill is not exhibited by collusion with the said the La Crosse and Milwaukee Railroad Company, nor for the purpose of protecting the property, rights, or effects of said company defendant, nor any part thereof, against the claims of other creditors, but for the sole purpose of obtaining the relief hereinafter prayed.

Your orators further show that on or about the 15th day of June, A. D. 1856, the said company defendant was the sole owner and seized in fee of each and every of the said lots of land, city lots in the city of Milwaukee in said district hereinbefore particularly described, and on which said marshal has levied your orators' said writ of fieri facias as hereinbefore set forth, and that said lands were then and there of great value, to wit, the value of one hundred thousand dollars and upwards, and that Byron Kilbourn, Moses Kneeland, and James Ludington were three of the directors of said company defendant on the day and year last aforesaid, and that on or about the day and year last aforesaid, while said company defendant was so seized of said land, the said Moses Kneeland and James Ludington were appointed by the board of directors of said company defendant, or by the executive committee of said board (which said board was composed of the said Kilbourn, said Kneeland, said Ludington and others), a committee to sell and dispose of said lands, worth at that time to the said company (as the said Kilbourn, Kneeland, and said Ludington then well knew) more than one
9 hundred thousand dollars, and your orators are informed and believe, and therefore say, that the said Kilbourn and the said Ludington, then and there designing and intending to injure and defraud said company and its creditors, and disregarding their duties as directors as aforesaid in the premises, and intending unlawfully and fraudulently to acquire to themselves and the said Kilbourn, or some other person or persons, by a violation of their duties as directors as aforesaid, the said lands for a grossly inadequate price (did sell and transfer) said lands, worth, as they then and there well knew, more than one hundred thousand dollars, to one Charles D. Nash, for the nominal consideration of twenty thousand dollars, in bonds or stocks of said company defendant; but that said Kilbourn, said Kneeland, and said Ludington, or one of them, furnished to said Nash, directly or indirectly, whatever the said Nash pretended to pay to said company for said lands, and that said sale was made to said Nash with the fraudulent, secret arrangement and understanding between said Nash and said Kilbourn, said Kneeland and said Ludington, or one of them; that said Nash should thereafter, when requested by said Kilbourn, Kneeland, or Ludington, convey and transfer said lands to said Kneeland, said Kilbourn, or said Ludington, for the benefit of said Kilbourn, Kneeland, and Ludington, for a nominal or no consideration; and that said Nash was wholly disinterested in said pretended sale to him of said land, and that soon after the conveyance of said lands to said Nash, that said
10 Nash did, in pursuance of said fraudulent and corrupt arrangement hereinbefore stated, convey and transfer said lands to said Kneeland for no consideration, or for a nominal or pretended consideration.

That said Kneeland, soon after the conveyance aforesaid to him, conveyed and transferred to said Ludington one-third of said land for no consideration, but really in pursuance of said corrupt agreement, and that said Kneeland now holds a record-title to two-thirds of said land for himself and the said Kilbourn; that the said Kneeland, said Kil-

bourn, and said Ludington pretend to hold these lands as aforesaid, which are worth now more than two hundred thousand dollars, in fraud of your orators' rights as creditors of said company defendant, and by reason of a violation of their duty as directors as aforesaid, and trustees of this same property, and that the same ought to be applied to the payment of your orators' said judgment, and that said conveyance, so made as aforesaid and of record, of the lands hereinbefore described, and upon which said writ of fieri facias has been levied, are a cloud upon your orators' right to sell said lands on the writ of fieri facias issued in their favor as aforesaid, and an impediment in the way of the execution of said writ, and that said E. Mariner, defendant, claims and pretends to have some right to or interest in said lands; but your orators show that the said Mariner bought his said interest, if he has any, in said lands with full notice of the matters and things hereinbefore set forth, and not bona fide, and now holds the same for the benefit
11 of said Kilbourn, or some other person, in fraud of your orator's rights as creditors as aforesaid.

And your orators further show that said Selah Chamberlain, defendant, has and holds a large sum of money by him received out of the earnings of said company, defendants' railroad, to wit, more than one hundred thousand dollars, received by him under and in pursuance of a certain lease by and between said railroad company, defendant, and said Chamberlain, which said company executed & said Chamberlain accepted, with intent to hinder, delay, and defraud the creditors of said company defendant, and which ought to be applied to the satisfaction of your orators' said judgment.

To the end, therefore, that the said defendants may, if they can, show cause why your orators should not have the relief hereby prayed, and may upon their several and respective corporal oaths and according to the best and utmost of their several & respective knowledge, information, remembrance & belief, full, true, direct & perfect answer make to all and singular the matters, things, statements and charges aforesaid, and that, too, as particularly as if the same were here again repeated, paragraph by paragraph, and they thereunto particularly interrogated, and that they may make answer as aforesaid to the several interrogatories hereinafter set forth and numbered, as by the note hereunder written they are respectively required to answer, that is to say:

12 1. Whether your orators did or not recover a judgment, as hereinbefore stated, and for the amount hereinbefore stated, and whether the said proceedings under the said judgment have been taken respectively as set forth in said bill?

2. Whether the amount, as hereinbefore stated, is or not now equitably due on said judgment?

3. Whether or not the said company defendant, on or about the 15 day of June, A. D. 1856, or at any other time, was the owner and seized in fee or otherwise, and how otherwise interested in the said several lots of land, or either of them, in the said city of Milwaukee, hereinbefore described in said bill, viz: Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14, in block 155; lots 1 & 4, in block 156; also the undivided one-half part, except lot 8, of block 157; also the bayou adjoining the said last-mentioned block, & thence running to the Milwaukee River; also the undivided ½ part of lots 8, 9, 16 & 17, in block 158; also lots 10, 12, 13 & 14, & the east half of lot 15, in block 158, all in the 4th ward; also lots 9, 10 & 11, in block 3, and lots 1, 2 & 3 in block 47, in the 5th ward of the city of Milwaukee, or some part thereof, or some part of said lots, and what was the value of said lands respectively; and whether

the said Byron Kilbourn, Moses Kneeland, & James Ludington, or either of them, were directors of the said company defendant, while it was so interested in said lands; and whether on the day and year last aforesaid, or on some other day which the said company, defend-
13 ant, was so seized of or in some way interested in said land, and while the said Kilbourn, said Kneeland, and said Ludington were directors of said company, defendant, the said Moses Kneeland & James Ludington were appointed by the board of directors of said company, defendant, or by the executive committee of said board, a committee to sell and dispose of the said land hereinabove described; and whether said Kneeland and said Ludington made a contract of sale, either in writing or by parol, which was subsequently ratified and executed by said company, defendant, agreeing to sell the said lands to one Charles D. Nash; and, if so, for what sums & consideration were the said lands sold to the said Nash; how did he pay therefor, in money, or in bonds, mortgages, stocks, or whatever thing of value? Where did the said Nash obtain what he paid therefor, and was it not, directly or indirectly, understood at the time of said pretended sale to said Nash that he, said Nash, should thereafter, at some time & upon some terms, and if so, what time and what terms, convey said lands to said Kilbourn, said Kneeland, or said Ludington?

4. Whether the said Nash, after the said conveyance to him, did convey said lands or any part thereof to said Moses Kneeland; if so, state when said conveyance was made, what consideration, if any, did the said Kneeland pay to the said Nash, was it paid in money, notes, bonds, mortgages, or other, and what other thing of value, and if said
14 Kneeland paid any consideration for such conveyance to him, what did the said Nash do with & how did he dispose of the same, and did not the same in some way or in some form or under some color or device return to the said Kneeland or to some other person for said Kneeland's benefit?

5. Whether any consideration was paid to the said Nash; and, if so, whether it was all paid by the said Kneeland, and whether the said Kilbourn or the said Ludington paid any part thereof or contributed in any manner thereto?

6. Whether the said Kneeland at any time, and what time, after said conveyance to him, conveyed one-third or any interest in (and, if any, what portion and what interest) of said lands so conveyed to him, to the said James Ludington; and what consideration did the said Ludington pay to the said Kneeland therefor, when, where, and in whose presence was it paid; was it paid in money, notes, bonds, mortgages or other (and what other) thing of value, and what did the said Kneeland do therewith and how disposed thereof, and did not the same in some way or under some cover or device return to the said Ludington or to some other person or persons for his benefit?

7. Whether the said Byron Kilbourn, Moses Kneeland, & James Ludington, or either of them, claim to own or be interested in said lands or any part thereof, and what part and what interest therein
15 does the said Kneeland, the said Kilbourn, and the said Ludington respectively claim to have or hold, of or in the said lands, and what is the value of the portion thereof or interest therein held or claimed by the said Kneeland and the said Kilbourn and the said Ludington respectively, and what is the aggregate value of said lands?

And that the several lots of land hereinbefore particularly described may be decreed and declared subject to the lien of your orators' said

judgment; and that your orators' said judgment may be declared to be a lien upon all of said lands and all real property owned by the said company defendant, in the said district of Wisconsin; and that your orators may be decreed and declared to be authorized to sell all of said lots of land hereinbefore described, or so much thereof as shall be necessary to satisfy their said judgment, and that the said Kneeland, the said Kilbourn, and the said Ludington may be decreed to join in the conveyance of the land (or so much thereof as shall be sold) to the purchasers at such sale; and that the said Kilbourn, the said Kneeland, and the said Ludington, and all persons for them, or either of them, or claiming by, through, or under them or either of them, be perpetually enjoined from making or pretending any right to or interest or estate therein, and that said conveyances of said land be declared null and void; and
16 that your orators may have such other & further relief as the nature of their case may require and as shall be agreeable to equity & good conscience, and that the said Kilbourn, the said Kneeland, and the said Ludington may each and every of them be strictly enjoined and prohibited from selling, transferring, conveying, leasing, incumbering, or in any way interefering or intermeddling with any of the said property and lots of land hereinbefore described and held, claimed, enjoyed, or possessed by them respectively or by any other person or persons for their use, or either of them.

And that said Chamberlain may be ordered & decreed to account for all moneys received by him under & by virtue of said lease, and pay over the same to the receiver in this cause to be applied to the satisfaction of your orators' said judgment.

May it please your honor to grant unto your orators a writ of injunction issuing out of and under the seal of the said court, directed to the said La Crosse and Milwaukee Railroad Company and Byron Kilbourn, Moses Kneeland, James Ludington, Ephraim Mariner, & Selah Chamberlain, defendants, their counselors, attorneys, solicitors, and agents, commanding and strictly enjoining them in the manner hereinbefore mentioned under a certain penalty until the further order of the court.

May it please your honor to grant unto your orators a writ of
17 subpœna issuing out of & under the seal of said court to be directed to the said La Crosse & Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, James Ludington, Ephraim Mariner, & Selah Chamberlain, defendants, commanding them and each of them by a certain day and under a certain penalty therein to be named and inserted to be and appear in said court at the court-house of said court, in the city of Milwaukee, in said district, and then & there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orators will ever pray, &c.

MAT. H. CARPENTER,
Sol. for Comp'Vt.

N. C. GRIDLEY,
Of Counsel.

Whereupon a subpœna issued returnable the first Monday of July next, as follows:

18 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States of America to the La Crosse & Milwaukee Railroad Company, Moses Kneeland, James Ludington, Ephraim Mariner, Byron Kilbourn, and Selah Chamberlain, greeting:

You are hereby commanded that you personally appear before the judge of the district court of the United States of America for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of July next ensuing, at Madison, to answer to a bill of complaint exhibited against you in our said court, by Lawrence G. Graham and Donald D. Scott, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said The La Crosse & Milwaukee Railroad Company, Moses Kneeland, James Ludington, Ephraim Mariner, Byron Kilbourn, and Selah Chamberlain, if to be found in his district, and due return thereof make.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this second day of June, in the year of our Lord one thousand eight hundred and sixty, and of our Independence the eighty-fourth.

[SEAL.] J. M. MILLER,
Clerk.

M. H. CARPENTER,
Solicitor.

It is ordered by our said court that the said The La Crosse & Milwaukee Railroad Company, Moses Kneeland, James Ludington, Ephraim Mariner, Byron Kilbourn and Selah Chamberlain, the defendants aforesaid, do enter their appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

19 *Return.*

Subpœna returned.

Served on the within-named James Ludington and Ephraim Mariner, by delivering a copy of this subpœna to each of them personally. Served on the within-named Byron Kilbourn by leaving a copy of this subpœna at his usual place of abode with a free white person, a member of the family, this 4th day of June, 1860. Served on the within-named The La Crosse & Milwaukee Railroad Company by delivering a copy of this subpœna personally to John Lockwood, one of the directors of said company, by direction of compl'ts sol'r, & served on the within-named Moses Kneeland by leaving a copy of this subpœna at his usual place of abode with a free white person, a member of his family, this 5th day of June, 1860. Served on the within-named Selah Chamberlain by delivering a copy of this subpœna to him personally this 9th day of June, 1860.

J. H. LEWIS,
Marshal.

Marshal's fees 20.46.

20 *Rule to plead.*

JULY 2, 1860.

On motion of Mat. H. Carpenter, complainant's solicitor, it is ordered that the defendants plead, answer, or demur to the complainant's bill of complaint on file by the 1st Monday of August next, or that said bill will be taken as confessed against them.

Demurrer.

JULY 5, 1860.

This day came the defendants, Byron Kilbourn, Moses Kneeland, James Ludington, and Ephraim Mariner, by their solicitor, Mr. Mariner, and filed their demurrer, as follows:

District court for the district of Wisconsin. In equity.

The demurrer of Byron Kilbourn, Moses Kneeland, James Ludington & Ephraim Mariner to the bill of complaint of Lawrence G. Graham & Donald D. Scott against these defendants, & Selah Chamberlain.

These defendants, by protestation, not confessing or acknowledging any of the matters and things in said bill of complaint to be true as therein alleged, demur thereto, and for cause of demurrer show that it appears in & by said bill that it is exhibited against these defendants & one Selah Chamberlain for several distinct matters, in some of which these defendants are in no way interested, and which do not depend upon each other, by the joining of which the proceedings in this
21 cause will be rendered intricate & prolix, and these defendants will be put to unnecessary costs & charges in matters which in no way concern them.

Wherefore these defendants demand judgment of this court whether they shall be compelled to make any further answer to the said bill of complaint, & pray to be dismissed hence with their costs.

E. MARINER,
Sol'r for Def'ts above named.

STATE OF WISCONSIN,
Milwaukee County, ss:

James Ludington, one of the within-named defendants, being duly sworn, says that the within demurrer is not interposed for purpose of delay.

JAMES LUDINGTON.

Subsrcibed & sworn before me this 4th day of July, 1860.

A. TROWBRIDGE,
Notary Public, Milwaukee Co., Wis.

I certify that the within demurrer is in my opinion well founded in point of law.

E. MARINER,
Of Counsel for the Def'ts Kilbourn, Kneeland & Ludington, & Mariner.

Bill dismissed as to S. Chamberlain.

AUGUST 13, 1860.

This day came the complainants, by their counsel, and on their motion it is ordered by the court that this bill be and hereby is dismissed as to the defendant Selah Chamberlain.

Bill taken as confessed as to La C. & Mil. R. R. Co.

SEPTEMBER 3, 1860.

This day came the complainants, by their counsel, and on their motion it is ordered by the court that this bill be and hereby is
22 taken as confessed as to the defendant The La Crosse & Milwaukee Railroad Company for its not filing it' plea, answer, or demurrer to the bill of complaint in this cause.

Demurrer overruled.

NOVEMBER 13, 1860.

This day the demurrer of the defendants, Byron Kilbourn, Moses Kneeland, James Ludington, and Ephraim Mariner, to this bill came on to be heard, and was submitted by the counsel of the parties. On consideration whereof it is ordered by the court that the said demurrer be and hereby is overruled. And it is further ordered by the court that the said defendants file their answers to this bill by the first Monday of December next.

Answer of Kneeland.

DECEMBER 8, 1860.

This day came the defendant, Moses Kneeland, by his solicitor, and filed his answer, as follows:

To the district court of the United States for the district of Wisconsin.

The separate answer of Moses Kneeland to the bill of complaint of Lawrence G. Graham and Donald D. Scott against the La Crosse & Milwaukee Railroad Company, this defendant, and others.

This defendant, now and at all times hereafter saving and reserving unto himself all and all manner of benefit and advantage of exception which might be had or taken to the said complainants' complaint, for answer thereunto or unto so much or such portion thereof as he
23 is advised is material and necessary to be answered unto, says:

That he admits that said complainants recovered two certain judgments in the said circuit court of Milwaukee County on the days and for the amounts set forth in the said complainants' bill of complaint, and that executions were issued thereon to the sheriff of Milwaukee County, and returned as set forth in said bill.

And this defendant admits that the said complainants recovered judgment on the said two judgments in the district court of the United States for the district of Wisconsin on the day and for the amount set forth in the complainants' said bill of complaint, and that a writ of fieri facias was issued to the marshal of the United States for the said district, and that the marshal levied upon the property as set forth in the complainants' said bill of complaint.

And this defendant, further answering, denies that the said La Crosse and Milwaukee Railroad Company was on the eighth day of September, 1855, or at any time seized in fee of lot 13 in block 158 in the fourth ward of the city of Milwaukee, or that it had any title or interest therein.

This defendant, further answering, denies that said company was seized in fee of more than the undivided half of lot ten in said block.

This defendant, further answering, admits that said company was on the said 8th day of September, A. D. 1855, seized in fee of lots
24 one & four in block 156; lots 4, 7, & 10 in block 155; lots 12, 14, & the east half of lot 15 in block 158 in the fourth ward of said city of Milwaukee, subject to the taxes for the years 1838, 1840, 1851, 1852, 1853, & 1854, and subject to a certain mortgage executed by the Milwaukee, Fond du Lac & Green Bay Railroad Company to Edward D. Holton to secure the sum of four thousand dollars and interest at the rate of eight per cent. per annum to secure the purchase-money of said lots, which said mortgage had been assigned to the Bridgeport Savings Bank. That said bank on the 13th day of December, 1858, commenced a suit in the circuit court for Milwaukee County to foreclose said mortgage against the said complainants, & the said defendant and others, and that such proceedings have been had in said suit that said premises have been sold on a judgment of said court and bid in by said bank.

And this defendant, further answering, admits that the said company was on the eighth day of September, A. D. 1855, seized in fee of lots 1, 2, 5, 6, 8, 9, 11, 12, 13, & 14 in block one hundred & fifty-five, except that several of said lots had been sold and deeded for the non-payment of taxes, and except that the same were subject to the sales for taxes for the years 1851, 1852, 1853, & 1854, and except that lots 13 & 14 were subject to a mortgage executed by said Milwaukee, Fond
25 du Lac & Green Bay Railroad Company (for the purchase-money thereof) to one John B. Lee, which, with accrued interest, amounted to about $900.

This defendant, further answering, admits that said company defendant, on said eighth day of September, 1855, held the legal title to the undivided one-eighth of block one hundred & fifty-seven in said ward subject to the taxes for the years 1851, 1852, 1853, & 1854.

This defendant, further answering, says that he does not know and cannot state whether the said company defendant was or was not seized in fee of the undivided one-eighth of the bayou in said complaint mentioned, and he shows that said bayou is a parcel of land which was not divided in partition, but which was left between the east side of block 157 & the channel and bank of the Milwaukee River without any explanation by the commissioners, and that a person claiming said premises, by specific grant from the original owners before partition, had commenced suit against the lessee of these defendants, and that said suit is now pending in the circuit court of Milwaukee County.

This defendant, further answering, admits that the said company defendant on the said eighth day of September, 1855, was seized of the legal title to lots 9, 10, & 11 in block No. 3, and lots 1, 2, & 3 in
26 block 47, in the fifth ward of said city, subject to the taxes levied thereon for the years 1853–1854, but this defendant charges that he is informed and believes that one James D. Doty then claimed to be the owner of said premises as the first grantee thereof from the United States.

And this defendant charges that prior to said eighth day of September, 1855, one George H. Walker, through whom said company derived its title, had commenced a suit to cancel the conveyance by which said company held said lots for the reason that such conveyance had been made to the Milwaukee, Fond du Lac & Green Bay Railroad Company for depot grounds, and that said Walker had been induced to make such conveyance by reason of the benefit which would accrue to him as a large real estate holder in the immediate vicinity, and that the

company defendant as successor of said Fond du Lac Company had established its depot in a distant part of the city, among other reasons, which suit was then pending against said company defendant.

This defendant, further answering, shows that said company defendant derived its title to all of said premises as successors to and by consolidation with the said Milwaukee, Fond du Lac & Green Bay Railroad Company, which last mentioned company had purchased said premises for depot grounds.

27 That the said company defendant had established its depot in a different part of the city, a mile distant from these premises, and had no use for these premises, and that the same were not in any manner necessary to the prosecution of its business. That the title to said premises was questionable and intricate, and that said premises were encumbered with mortgages which were maturing. That there were outstanding against said premises taxes to the amount of about four thousand dollars, and upon which said premises had been sold and upon the certificates of sale interest was accruing at the rate of twenty-five per cent. per annum. That said premises, except the lots in block three and the front fifty feet of lots in block 158 and the streets platted and adjacent thereto, were covered with water to depths varying from six to twelve feet, and that said lots all required filling, and block 155 required docking before they could be used for any purpose whatsoever. That to have docked & filled said lots at that time would have required the expenditure of from thirty to thirty-five thousand dollars. That said company had neither the authority nor the money necessary to dock and fill said lots, nor had it any money which it was at liberty to divert to that purpose, nor to pay the accruing taxes and incumbrances thereon. That during the fall of the year 1854 and the spring

28 & summer of the year 1855, the said company offered said property for sale to any person who would buy at prices varying from $18,000 to $28,000, varying according to the warranty desired and the times and manner of payment, but could not procure a purchaser at these prices, nor could it procure a purchaser who would pay cash at any price, as this defendant is informed and believes.

That the latter part of the month of August, 1855, or in the first part of September of that year this defendant informed said Charles D. Nash of the terms and prices at which said premises could be purchased, and requested him to purchase the same for himself, said Nash, and one Carlisle D. Cooke, now deceased, who was then absent from the city.

That said Nash inquired into the matter, and in a few days told this defendant that he would purchase said premises at the price and terms offered if this defendant would take an interest in such purchase; to which this defendant agreed provided said Cooke should on his return desire this defendant to take such interest in said purchase; and upon such agreement by said defendant the said Nash made a proposition in writing to purchase said premises of said company defendant, by which said Nash, in substance, agreed to purchase said premises

29 and pay therefor the sum of $25,000 in *manner*, ten thousand dollars in the bonds of said company, secured by notes and mortgage of farmers who had subscribed to the capital stock of said company, commonly known as farm mortgage bonds, which had theretofore been executed and negotiated by said company, and fifteen thousand dollars in the full-paid stock of said company, upon the termination of the suit commenced by said George H. Walker for the cancellation of the conveyance of so much of said property as was situated in the fifth

ward of the city of Milwaukee, which proposition was accepted by said company; and thereupon the said company executed and delivered to said Nash its quitclaim deed for the lots situate in the fourth ward of said city, and executed and delivered to said Nash an agreement in writing to transfer the lots in the fifth ward of said city to said Nash should the same be adjudged to be the property of said company, a copy of which agreement is hereunto annexed marked Exhibit "A," and to which this defendant for greater certainty refers. That said Nash thereupon paid the said company ten thousand dollars in said farm mortgage bonds of said company which, as this defendant is informed and believes, were shortly afterwards transferred and negotiated by said company defendant in and about the construction of its railroad.

30 This defendant, further answering, denies that he ever advised said company defendant to make such sale to said Nash further than in that he had at all times advised the sale of said lots to any person who would purchase them at a reasonable price. That he received the price and terms of sale of said property from Dr. Judd, the president of said company defendant, and he communicated them to said Nash just as he received them from said president, and that the proposition of said Nash to purchase said lots was for the same price and terms given him by said president.

This defendant, further answering, denies that said premises were at the time of such purchase of said Nash worth the sum of one hundred thousand dollars, and denies that they were worth more than was paid for them by said Nash. That this property was unimproved and that its value then was and to this day is almost entirely speculative.

And this defendant, further answering, denies that he designed to injure or defraud said company in, by, or through such sale, and he denies that said purchase was made by said Nash with any design to injure or defraud said company or in any way or manner; and this defendant denies that in whatever manner he participated in such sale he disregarded his duty as a director of said company, intending fraudu-

31 lently to acquire the title to said property to himself or any other person in violation of his duty as such director; and he denies that such purchase was made with any understanding or agreement between himself and said Nash except as hereinbefore set forth.

And this defendant, further answering, admits that he loaned said Nash the farm-mortgage bonds which said Nash paid said company in such purchase and took his due-bill therefor, but he denies that he lent said bonds to said Nash with any secret or fraudulent agreement or understanding directly or indirectly that said Nash should convey said lots to this defendant or to him for the use and benefit of the other defendants to this suit, or to any other person, or upon any agreement whatsoever, except as he has hereinbefore stated.

This defendant, further answering, shows that after said purchase by said Nash of said company and after said Nash had made a more thorough examination of the titles to said property said Cooke refused to take any part in such purchase and said Nash requested this defendant to take the whole purchase off his hands, to which request this defendant agreed, provided he could induce another person or persons to take a share in such purchase that he would do so; that this defendant requested said Ludington and said Kilbourn to take an interest in

32 such purchase, and that said Ludington agreed to take an interest in such purchase, and that said Kilbourn said he thought he would do so and that he would consider the matter; that this defendant then told said Nash that he would take such purchase off his hands

and took from him a quitclaim deed of said premises in the fourth ward of said city and an assignment of the contract in reference to the lots in the fifth ward, and gave up to said Nash his due-bill for said bonds; that afterward and some time in the month of October, in the year 1855, the said Ludington paid to this defendant his proportion of the purchase-money for said lots, and this defendant conveyed one-third of said lots to the said Ludington.

And this defendant further shows that about the same time said Kilbourn agreed to take one-third of said purchase and paid this defendant therefor, and that thereupon this defendant conveyed one-third undivided of said premises to said Kilbourn.

And this defendant, further answering, shows that afterwards this defendant negotiated a settlement of the said suit of the said Walker against said company by the payment to said Walker of a large sum of money, and perfected the title to said lots in the fifth ward in said company, except as to the taxes & interest of said Doty aforesaid, and that thereupon said suit was discontinued and said company quitclaimed said lots to said Nash in pursuance of said agreement, and
33 said Nash quitclaimed the same to this defendant, and these defendants paid said fifteen thousand dollars in stock to said company.

And this defendant, further answering, admits that at the time of such purchase by said Nash of said lots the said defendants Kneeland and Ludington were directors of said company.

And this defendant, further answering, shows that at the date of said conveyance of said premises by the said company defendant to the said Nash the said company was not indebted to the said complainants in any sum whatever.

And this defendant further avers that soon after the execution and delivery of said deeds to said Ludington and Kilbourn they went into possession of said premises and commenced improving them, and that they have so remained in possession of said premises uninterrupted by any person whatever, and without having their right or occupation disputed by any person except the complainants & one Newcomb Cleveland, and except by persons claiming adversely, as hereinbefore set forth. That since they purchased said premises they have laid out and expended thereupon over fifteen thousand dollars in valuable improvements upon said property in docking and filling the same and in making streets adjacent thereto, and that they have made such dis-
34 bursements with the knowledge or consent and without the interruption of said railroad company.

This defendant, further answering, shows that after the conveyance of said premises to said Nash by said company, and after the same had been by said Nash conveyed to this defendant, and after the commencement of the suit of Newcomb Cleveland against these defendants and others in the district court of the United States for the district of Wisconsin, this defendant submitted to the board of directors of said company defendant the bill of complaint and the answer in that suit, this defendant for himself and for the other defendants interested in said premises and with their authority and consent offered to said board of directors to reconvey all and singular the said premises to said company defendant provided the said company defendant would pay back the consideration of said purchase, and pay back the moneys expended by these defendants in permanent improvements & for taxes & incumbrances with interest at seven per cent. per annum, and that said board

of directors after examining the property wholly refused to accept such proposition.

This defendant, further answering, shows that on the tenth day of March, A. D. 1858, the said company defendant, after having been fully and fairly advised of the facts set forth in the bill of complaint
35 in this cause, and after having read and examined the bill of complaint of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, these defendants & Selah Chamberlain, heretofore exhibited in this court, and the answer of this defendant in said suit, and after having fully and thoroughly examined the property and premises described in said bill of complaint, by resolution of its board of directors, a copy of which is hereunto annexed marked Exhibit B and made a part of this answer, confirmed such sale and executed and delivered to this defendant a quitclaim deed of said premises to carry the same into effect.

And this defendant therefore prays the same benefit and advantage of this his answer in this behalf as if he had specially plead such conformation in bar of this suit.

And this defendant denies all unlawful confederation and combination in said bill charged, without that any other matter or thing in said bill mentioned, material or necessary, or material to be answered unto and not herein and hereby confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendant.

All of which matters and thing this defendant is ready to aver, maintain, and prove as this court shall direct, and prays to be dis-
36 missed hence with his costs and charges in this behalf sustained.

MOSES KNEELAND.

WM. P. LYNDE,
of Counsel.
E. MARINER,
Solicitor.

DISTRICT OF WISCONSIN, *ss:*

This 8th day of December, A. D. 1860, before me came Moses Kneeland, defendant herein, and having been duly sworn, said that he had heard read the foregoing answer by him subscribed and that he knows the contents thereof, and that the same was true of his own knowledge except as to those matters therein stated upon information & belief, and as to those matters he believes it to be true.

Subscribed & sworn to before me this 8th day of December, A. D. 1860.

EDWARD KURTZ,
U. S. Com'r.

EXHIBIT B.

Whereas this company did by deed bearing date September 8, 1855, sell and convey unto Charles D. Nash the following described real estate situate in the fourth ward of the city of Milwaukee, to wit: Lots 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14, in block 155; lots 1 & 4, block 156; one-eighth block 157, except lot 8, with the bayou adjoining; lots 10, 12, 13, 14, & E. ½ of lot 15, one-third of lots 8, 9, 16, & 17, in block 158; and did also convey to said Nash by deed bearing date July 14, 1856, the
37 following described lots in the fifth ward of the city of Milwaukee, to wit: Lots 9, 10, & 11, in block 3, and lots 1, 2, & 3, in block 47, and received from said Nash his bond of indemnity against certain incumbrances upon said property for which this company was liable; and

whereas said Nash afterwards conveyed the said premises to Moses Kneeland, said Kneeland substituting his bond of indemnity to this company for the bond of said Nash, said Kneeland being at the time of such purchase and sale of said property a director in this company and a member of the executive committee; and whereas it has been charged that said Kneeland had an interest in the purchase of said premises by said Nash from this company, and that by reason thereof and by reason of said Kneeland being at the time of such purchase a director and member of the executive committee of this company, the said Kneeland has only a trust estate in said premises; and whereas this company is desirous of perfecting the title to said premises in said Kneeland, his heirs and assigns.

Therefore resolved, That the title, legal and equitable, of the said premises, and the deed conveying the same, be, and hereby are, confirmed in and to the said Kneeland, his heirs and assigns, so far as this company has any interest therein.

(Exhibit A not annexed hereto.)

JANUARY 7, 1861.

38 This day came the defendant, James Ludington, by his solicitor, Mr. Mariner, and the defendant, Ephraim Mariner, in person, and filed their answer, as follows:

Answer of Ludington.

To the district court of the United States for the district of Wisconsin.

The separate answer of James Ludington to the bill of complaint of Lawrence G. Graham and Donald D. Scott against the La Crosse & Milwaukee Railroad Company, this defendant, and others.

This defendant, now and at all times hereafter saving and reserving unto himself all and all manner of benefit and advantage of exceptions which might be had or taken to the said complainants' bill of complaint, for answer thereunto, or unto so much or such portion thereof as he is advised is material and necessary to be answered unto, says:

That he admits that the said complainants recovered two certain judgments in said circuit court of Milwaukee County on the days and for the amounts set forth in the said complainants' bill of complaint, and that executions were issued thereon to the sheriff of Milwaukee County and returned in manner as set forth in said bill.

And this defendant, further answering, admits that the said complainants recovered judgment on the said two judgments in the district court of the United States for the district of Wisconsin on the day and for the amount set forth in the complainants said bill of complaint

39 and that a writ of fieri facias was issued to the marshal of the United States for said district, and that the said marshal levied upon the property and in the manner set forth in the said complainants' bill of complaint.

And this defendant, upon information and belief, denies that the said La Crosse and Milwaukee Railroad Company was, on the eighth day of September, 1855, or at any time, seized in fee of lot (13) thirteen, in block 158, in the fourth ward of the city of Milwaukee, or that it had any title or interest therein.

This defendant, further answering, admits that the La Crosse and Milwaukee Railroad Company had the legal title of lots one and four, in

block 156, in the fourth ward of the city of Milwaukee, and lots 4, 7 & 10, in block 158, and lots 12, 14 and the east half of lot 15, in block 158, in said ward *ward* subject to the taxes for the years 1838, 1840, 1851, 1852, 1853, 1854, and subject to a certain mortgage executed by the Milwaukee, Fond du Lac & Green Bay Railroad Company to Edward D. Holton to secure the payment of the sum of $4,000 and interest at the rate of eight per.cent. per annum, the same being for the purchase money of said lots, which said mortgage, as this defendant has been informed and believes, had been assigned by said Holton to the Bridgeport Savings Bank. That said bank afterwards, and on or about
40 the 13th day of December, 1858, commenced an action to foreclose said mortgage against the said company defendant, the complainants herein, this defendant & others, in the circuit court for Milwaukee County, and that said premises have been sold under a decree of said court to satisfy said mortgage and bid in by said bank.

And this defendant, further answering, admits that said company defendant, on the 5th day of June, 1856, was seized of the legal title to lots 1, 2, 5, 6, 8, 9, 11, 12, 13 & 14, except that several had been sold and conveyed from time to time for taxes, and subject to outstanding tax certificates to the amount of several hundred dollars, and subject to a mortgage executed by said Milwaukee & Fond du Lac & Green Bay Railroad Company, and delivered to one John B. Lee, to secure the payment of the purchase money of lots 13 & 14 in said block, amounting to about $900, including interest.

This defendant, further answering, shows that said railroad company, defendant, held the legal title to the undivided one-eighth of block one hundred & fifty-seven subject to the taxes for the years 1851, 1852, 1853 & 1854.

This defendant, further answering, shows that he does not know and cannot state whether the said La Crosse and Milwaukee Railroad Company, defendant, was or was not seized in fee of the undivided one-eighth part of the bayou in said complaint mentioned.

41 And this defendant, further answering, shows that since the execution and delivery of the deed of said bayou a suit has been commenced for the recovery of the whole of said bayou against the lessee of the defendant, among others who claim as riparian proprietors by persons claiming by specific grant from the grantee of the United States.

This defendant, further answering, admits that the La Crosse and Milwaukee Railroad Company, defendant, was seized of the legal title to lots 9, 10, & 11 in block No. 3, & lots 1, 2 & 3 in block 47, in the fifth ward of the city of Milwaukee, on the said 15th day of June, 1855, and subject to a title claimed by James D. Doty as the first grantee of the United States, and subject to outstanding taxes for the years 1853 & 1854.

But this defendant charges that at the time of the sale to said Nash mentioned in said bill of complaint, one George H. Walker, who had previously sold said lots to the Milwaukee, Fond du Lac & Green Bay Railroad Company, had commenced a suit for the cancellation of his conveyance of said lots for the reason that said lots had been conveyed to the said company to be used as a depot, and that the said company had been consolidated with the La Crosse and Milwaukee Railroad Company and had established its depot in another part of the city.

This defendant, further answering, shows that the said company
42 defendant became seized of its interest in said premises as successor to the said *said* Milwaukee, Fond du Lac & Green Bay

Railroad Company, which last mentioned company had purchased said premises for a depot.

That said La Crosse & Milwaukee Railroad Company had established its depot in another part of the city, distant a mile from said premises, and had no use for said premises, and that the same were not in any manner necessary for the prosecution of its business; that the title to said premises was questionable and intricate, and that said premises were incumbered with mortgages; that there were outstanding against said premises taxes to the amount of about four thousand dollars, and upon which said premises had been sold, and upon the certificates of sale interest was accruing at twenty-five per cent. per annum; that said premises, except the lots in block three and the front sixty feet of the lots in block 158 and the streets platted adjacent thereto, were covered with water to depth varying from six to twelve feet, and that said lots all required filling and block 155 required docking before they could be used for any purpose whatsoever; that to have docked & filled said lots at that time would have required the expenditure of from thirty to thirty-five thousand dollars; that said company had neither the authority nor the money necessary to dock and fill said lots, nor had it any money which it was at liberty to devote to that purpose or
43 pay the accruing taxes and incumbrances thereon; that during the fall of the year 1854 and the spring and summer of the year 1855 the said company offered said property for sale to any person who would buy at prices varying from $18,000 to $28,000, varying according to the warranty desired and the times and manner of payment, but could not procure a purchaser at these prices, nor could it procure a purchaser who would pay cash at any price, as this defendant is informed and believes.

That in the latter part of the month of August, or in the early part of the month of September, 1855, the said Charles D. Nash made a written proposition to the board of directors of the La Crosse & Milwaukee Railroad Company to purchase the interest of the company in said premises and pay therefor the amount of $25,000, $10,000 in farm mortgage bonds and $15,000 in the full-paid capital stock of said company, which was accepted by the board of directors of said company, and a deed of quitclaim given by said company to said Nash for the premises situate in the fourth ward, and a contract to convey the premises in the fifth ward in case the said company should succeed in the suit against Walker to said Nash, and that thereupon said Nash executed and delivered to said company a bond or other agreement to save said company harmless of and from all liability on account
44 of any incumbrance upon said property, and of and from all costs & charges which might come to said company by reason thereof, or by reason of any suits on account of such property, and paid to said company $10,000 in the farm mortgage bonds of said company, which were received by said company, and which said bonds were by said company shortly afterwards paid out in and about the business of said company in the construction of its said railroad.

And this defendant, further answering, shows that afterward, and on or about the day of October, 1855, the defendant, Moses Kneeland, told this defendant that said Nash was anxious to be relieved from his said purchase, and asked this defendant to take an interest therein, & that this defendant agreed to do so; that, as this defendant is informed & believes, that said Kneeland then took a quitclaim of said premises from said Nash and an assignment of said contract, & with the consent of said company substituted his, said Kneeland's, bond to the said company for

the bond of said Nash, so given to indemnify said company, and procured said Nash bond to be given up and cancelled by said company defendant.

This defendant, further answering, admits that at the time of the purchase of said lands from said company by said Nash this defendant was a director of said company and a member of its executive
45 committee, but denies any knowledge that he was with said Kneeland appointed a committee of said executive committee, or said board of directors, to sell said premises, or that he advised the sale of the same further than as a matter of policy for said company; and he denies that said premises were worth the sum of one hundred thousand dollars, or anywhere near that sum.

And this defendant, further answering, denies that the said complainants' were, at the time of the sale of said premises by said company to said Nash, creditors of said company.

And this defendant, further answering, denies that the said Kneeland and said Ludington sold said premises to said Nash for any price or at any time. And, further answering, he denies that in so much of the transaction of the purchase and sale of said property by said company to said Nash as he participated, that he acted designing or intending to injure or defraud in any way or manner the creditors of said company or the said company, or that he so acted disregarding his duty as a director of said company, intending to acquire unlawfully or fraudulently said premises to himself, or to any other person or persons, for a grossly inadequate price, or for a nominal or insufficient consideration; and he denies that he furnished any part of the consideration paid said company by said Nash; and he further denies that at the time said
46 sale was made to said Nash there was any fraudulent or secret agreement or understanding between said Nash & this defendant, to the best of his information & belief, with either of his co-defendants, that said premises should be subsequently transferred by said Nash to this defendant, or either of his co-defendants, or to any other persons, for their benefit upon their request, or upon the request of either of them, and he denies that, to the best of his knowledge, information and belief, that the conveyance of said premises by said Nash to said Kneeland was made in pursuance to or in furtherance of any such agreement.

This defendant, further answering, shows that upon the conveyance aforesaid by said Kneeland to this defendant he paid to said Kneeland the sum of three thousand six hundred and twenty-three dollars & twenty-six cents, and afterward and when said suit with said Walker touching the property in the fifth ward had been settled, he paid said Kneeland the further sum of $5,000, which said sums were paid in manner following: Five thousand dollars in the full-paid capital stock of said company; one thousand dollars in the farm mortgage bonds of said company, and the remainder in two promissory notes of this defendant for the sum of $2,633.26, which were afterwards and at their maturity paid by this defendant.

47 This defendant, further answering, shows that he, said Kneeland & said defendant Mariner have, since such purchase by said Kneeland from said Nash, and since they have had the title to said property, expended thereupon in permanent improvements in docking, dredging, & filling said lots and in payment of incumbrances and taxes, about the sum of nineteen thousand dollars.

This defendant, further answering, shows that some time in the year 1857 one Newcomb Cleveland filed his bill of complaint in this court setting forth substantially the matters set forth in the bill of complaint

in this cause touching the sale of said property and setting forth that the title of these defendants was by reason of such matters an estate in trust for the benefit of said company and its creditors, to which suit the said company and these defendants were parties defendant. That said company on the 18th day of March, 1855, after a new board of directors had been elected, of which this defendant was not a member, and prior to the recovery of the judgments of the complainants, after having been fully and fairly advised of the matters and charges in said bill of complaint, by resolution of its board of directors bearing date on that day, confirmed such sale so as aforesaid made to said Nash and the title thereby passed to
48 said Kneeland, his heirs and assigns, a copy of which resolution is hereto annexed & made part of this answer.

This defendant, further answering, says that afterwards and on or about the twenty-fourth day of Ma', 1859, and after said company had elected a new board of directors, of which said Moses Kneeland was not a member, said new board of directors at the request of this defendant and said Kneeland, and for the purpose of obviating any question as to the title to said premises and as to said former confirmation by reason of said Kneeland's having at the time of such confirmation been a member of said board of directors, although he was not present & did not vote on the passage of the resolution of confirmation, by resolution of its board of directors bearing date on that day, a copy whereof is hereto annexed & made part of this answer, further confirmed said title to these defendants, and that in pursuance of said resolution said company, by its officers duly authorized, executed a quit-claim of said premises to the said defendant Moses Kneeland.

Without this, that any other matter or thing in said bill of complaint contained and not herein confessed and avoided, traversed and denied, is true, to the knowledge & belief of this defendant.

E. MARINER,
Def't's Sol'r.

WM. P. LYNDE,
Of Counsel.

EXHIBIT A.

49 Whereas this company did, by deed bearing date September 8th, 1855, sell and convey unto Charles D. Nash the following described real estate, to wit: lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14, in block 155; and lots 1 & 4 in block 156, and one-eighth of block 157 except lot 8, and one-eighth of the bayou adjoining the said block 157, and one third of lots 8, 9, 16, & 17, and lots 10, 12, 13, 14, and the east half of lot 15 in block 158, in the fourth ward; and lots 9, 10, & 11, in block 3, and lots 1, 2, & 3 in block 47, in the fifth ward of the city of Milwaukee; and received from said Nash his bond of indemnity against certain incumbrances upon said property for which this company was liable; and whereas said Nash afterwards conveyed the said premises to Moses Kneeland and substituting his bond of indemnity to the company for said Nash's, said Kneeland being at the time of such purchase and sale of said property a director in this company and a member of the executive committee;

And whereas it has been charged that said Kneeland had an interest in the purchase of said premises by said Nash from the company, and that by reason thereof and by reason of said Kneeland's being at the time of such purchase a director, and member of the executive com-

mittee of this company, the said Kneeland has only a trust estate in said premises; and whereas this company is desirous of perfecting the title to said premises in said Kneeland, his heirs and assigns, so far as this company has any interest therein:

Therefore resolved, that the title, legal and equitable, of the said premises and the deed conveying the same, be and are hereby confirmed in and to the said Kneeland, his heirs and assigns, so far as this company has any interest therein.

EXHIBIT B.

Whereas this company did by deed bearing date September 8th, 1855, sell and convey unto Charles D. Nash the following described real estate, situate in the fourth ward of the city of Milwaukee, to wit, lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14, in block 155; lots 1 & 4, block 156; one undivided eighth of block 157, except lot 8, with the bayou adjoining; lots 10, 11, 12, 13, 14, & east half of 15; one undivided third of lots 8, 9, 16, & 17, in block 158; and did also convey to said Nash, by deed bearing date July 14th, 1856, the following described lots in the fifth ward of the city of Milwaukee, to wit, lots 9, 10, & 11, in block 3, & lots 1, 2, & 3, in block 47, and received from said Nash his bond of indemnity against certain incumbrances upon said property, for which this company was liable;

And whereas the title held by other parties under the said Nash to the above lands has been questioned & it has been held that the company have a right to reclaim the said property and the title so conveyed to the said Nash upon payment of the value of the original consideration paid by said Nash thereupon, and of the permanent improvements on said lands, which amounts to a large sum:

Therefore it is resolved, that William Platt, vice-president, and the secretary execute the quitclaim deed of said land to said Kneeland and Ludington, now presented on their behalf of the board, and be placed in the hands of E. G. Ryan, to be delivered to said Kneeland and Ludington.

Answer of E. Mariner.

To the district court of the United States for the district of Wisconsin:

The separate answer of Ephraim Mariner to the bill of complaint of Lawrence G. Graham and Donald D. Scott against The La Crosse and Milwaukee Railroad Company, this defendant, and others.

This defendant, now and at all times hereafter saving and reserving unto himself all and all manner of benefit and advantage of exception which might be had or taken to the said complainants' complaint, for answer thereunto, or unto so much or such portion thereof as he is advised is material and necessary to be answered unto, says:

That he admits that the said complainants recovered two certain judgments in said circuit court of Milwaukee County, on the days and for the amounts set forth in the said complainants' bill of complaint, and that executions were issued thereon to the sheriff of Milwaukee County and returned in manner as set forth in said bill.

And this defendant, further answering, admits that the said complainants recovered judgment on the said two judgments in the district court of the United States for the district of Wisconsin, on the day and for the amount set forth in the complainants' said bill of

complaint, and that a writ of fieri facias was issued to the marshal of the United States for said district, and that the said marshal levied upon the property and in the manner set forth in the said complainants' bill of complaint.

And this defendant, upon information and belief, denies that the said La Crosse and Milwaukee Railroad Company was on the eighth day of September, 1855, or at any time, seized in fee of lot 13, in block 158, in the fourth ward of the city of Milwaukee, or that it had any title or interest therein.

This defendant, further answering, admits that the La Crosse and Milwaukee Railroad Company had the legal title of lots one & four in block 156, in the fourth ward of the city of Milwaukee, and lots 4, 7, & 10, in block 155, & lots 12, 14, and the east half of lot 15, in block 158, in said ward, subject to the taxes for the years 1838, 1840, 1851, 1852, 1853, & 1854, and subject to a certain mortgage executed by the Milwaukee, Fond du Lac & Green Bay Railroad Company to Edward D. Holton to secure the payment of the sum of $4,000 & interest at the rate of eight per cent. per annum, the same being for the purchase money of said lots, which said mortgage, as this defendant has been informed
53 and believes, had been assigned by said Holton to the Bridgeport Savings Bank. That said bank afterwards, and on or about the 13th day of December, 1858, commenced a suit to foreclose said mortgage against the said company defendant, the complainants, and this defendant and others in the circuit court of Milwaukee County, and that said premises have been sold under a decree of said court to satisfy said mortgage, and bid in by the said bank.

And this defendant, further answering, admits that said company defendant on the 5th day of June, 1856, was seized of the legal title to lots 1, 2, 5, 6, 8, 9, 11, 12, 13, & 14, except that several had been sold and conveyed from time to time for taxes, and subject to outstanding tax certificates to the amount of several hundred dollars, and subject to a mortgage executed by said Milwaukee, Fond du Lac & Green Bay Railroad Company, and delivered to one John B. Lee to secure the payment of the purchase money of lots 13 & 14 in said block, amounting to about $900 including interest.

This defendant, further answering, shows that said railroad company defendant held the legal title to undivided one-eighth of block one hundred & fifty-seven, subject to the taxes for the years 1851, 1852, 1853, & 1854.

This defendant, further answering, shows that he does not know and cannot state whether the said La Crosse and Milwaukee Railroad
54 Company defendant was or was not seized in fee of the undivided one-eighth of the bayou in said complaint mentioned.

And this defendant, further answering, shows that since the execution and delivery of the deed of $\frac{1}{8}$ of said bayou a suit has been commenced for the recovery of the whole of said bayou against the lessee of the defendant, among others who claim as riparian proprietors, by persons claiming by specific grant from the grantee of the United States.

This defendant, further answering, admits that the La Crosse & Milwaukee Railroad Company, defendant, was seized of the legal title to lots 9, 10, & 11, in block No. 3; & lots 1, 2, & 3, in block 47 in the fifth ward of the city of Milwaukee, on the said 15th day of June, 1855, and subject to a title claimed by James D. Doty, as the first grantee of the United States, and subject to the outstanding taxes for the years 1853 & 1854.

But this defendant charges that at the time of the sale to said Nash,

mentioned in said bill of complaint, one George H. Walker, who had formerly sold said lots to the Milwaukee, Fond Du Lac & Green Bay Railroad Company, had commenced a suit for cancellation of his conveyance of said lots for the reason that said lots had been conveyed to the said company to be used as a depot and that the said company had been consolidated with the La Crosse and Milwaukee Railroad
55 Company and established its depot in another part of the city.

This defendant, further answering, shows that the said company, defendant, became seized of its interest in said premises as successor to the said Milwaukee, Fond du Lac & Green Bay Railroad Company, which last mentioned company had purchased said premises for a depot. That said La Crosse & Wilwaukee Railroad Company had established its depot in another part of the city, distant a mile from said premises, and had no use for said premises.

That except the front forty to fifty feet of lots eight, nine, ten, twelve, fourteen, fifteen, sixteen, & seventeen in block one hundred & fifty-eight, and lots nine, ten and eleven in block three (3), all of said lots were covered with water to the depth varying from five to ten feet, and required filling before they could be used for any purpose whatsoever.

That to have rendered them useful for any purpose whatsoever would have at that time required an expenditure of from twenty-five to thirty thousand dollars.

That said company, defendant, had neither the authority or the funds necessary to dock and fill said lots, and had not the funds which they were at liberty to divert to pay the taxes and incumbrances thereon.

This defendant, further answering, admits that said company, defendant, on or about the eighth day of September, 1855, sold and
56 transferred all its right, title, and interest in and to said premises to one Charles D. Nash, but upon what understanding or agreement this defendant has no knowledge, except what he has derived from the records of said company & what he has derived from said Kneeland and from his answer in this & other suits, and this defendant believes such statements in said answer to be true.

This defendant, further answering, states that he has no knowledge, except such as he has derived from said Kneeland and said answer, of the intention of the said Kneeland and said Nash in making such purchase, aside from what is expressed in the contract and conveyances of said company to said Nash, and that he believes such answer of Kneeland to be true.

This defendant, further answering, denies that said premises were on the said eighth day of September, 1855, worth the sum of one hundred thousand dollars or anywhere near that sum, and he charges the fact to be that the interest of said company in said premises was not at that time worth more than twenty-five thousand dollars. That the value, whatever it was, was speculative. That the said property was not then susceptable of use. That in 1852 said premises could have been purchased for eighteen thousand dollars. That Dr. Judd, the president of
57 said railroad company, acting on behalf of said railroad company, offered to quitclaim the interest of said company in the spring of the year 1855 to this defendant for the sum of eighteen thousand dollars ($18,000), payable in monthly installments of one thousand dollars each until paid, and this defendant refused to purchase said property at that price and upon these terms, and this defendant says that at that time he was able to have purchased said property and pay for it on these terms, and that he was dealing in real estate.

58 This defendant, further answering, upon his information and belief, denies that said sale was made by said company with intent to defraud its creditors, and he further denies that the said complainants were at the time of such sale by said company to said Nash of said premises the creditors of the said company; and this defendant, further answering, denies, upon information and belief, that the said Moses Kneeland and James Ludington had been appointed a committee by said company or by its executive committee to effect a sale of said premises, but he admits that said Kneeland and said Ludington were members of the executive committee appointed by the board of directors of said company, and he also admits that said Kneeland, Ludington & Kilbourn were, at the time of such purchase by said Nash of said company, directors in the said La Crosse and Milwaukee Railroad Company.

This defendant, further answering, shows that he is the owner in fee of one-third of the interest which the La Crosse & Milwaukee Railroad had in and to said premises, except where such title has failed, as hereinbefore set forth. That he derived such title under and by virtue of a deed executed to this defendant by one Edwin H. Goodrich on the 18th day of November, 1857; and this defendant further shows that
59 said Goodrich, as this defendant is informed and believes, derived his title to said premises from one Byron Kilbourn, by deed executed and delivered by Byron Kilbourn & Henrietta, his wife, bearing date April 1st, 1857.

This defendant, further answering, shows that he purchased one-sixth of said premises without any knowledge or information in any manner that said Nash had purchased the said premises under any understanding or agreement between him and said Kneeland, or any person being a director of said company, that said Kneeland or any other director of said company was to have any interest in the property purchased, or any benefit or advantage of such purchase whatever; and that he paid the entire purchase price for said one-sixth of said premises without any knowledge or information of any such interest or agreement.

This defendant, further answering, shows that he purchased the other one-sixth of said property after he had read the first bill filed by Newcomb Cleveland, complainant, against the said company, defendant, and others.

That he purchased said one-sixth of Edwin H. Goodrich, who had theretofore purchased the same of the said Kilbourn.

And this defendant is informed and believes, and charges the fact to be, that said Goodrich, at the time he purchased said premises of
60 said Kilbourn, paid said Kilbourn therefor; and that said Goodrich had, at the time of such payment, no knowledge or information that said Kneeland or any other director in said company had any arrangement with said Nash or any understanding with him by or through which he, said Kneeland, or either of these defendants, was to have a share in such purchase or in the premises, either directly or indirectly.

This defendant, further answering, says that at the time of the purchase of said one-third of said property by said Goodrich of said Kilbourn and by the said defendant of said Goodrich, the said Kneeland, Kilbourn, Ludington, & Goodrich, and their tenants, were in possession of so much of said premises as were in a condition to be occupied; and that no other person claimed to be in possession of said premises.

And this defendant *defendant*, further answering, claims that by reason of the facts hereinbefore stated he is a purchaser for value in good faith

and without notice of any secret trust or counter-claim in favor of said company; and that he holds said premises discharged of such trust if any of them was.

This defendant, further answering, says that the said defendants have since the execution and delivery of the said deed of said premises
61 by said Nash to said Kneeland and by said Kneeland to said Kilbourn expended over fifteen thousand dollars in valuable and permanent improvements upon such property; and that they have paid out a large amount for taxes and to remove incumbrances upon said premises. That this defendant has paid and become liable to pay about three hundred dollars to procure abstracts of title to said property, and that he has expended time in and about the examination and perfecting the title to said property in the management thereof in which he could have earned the sum of one thousand dollars; and that he has made his proportion of such expenditure in good faith and for the purpose of improving the property and perfecting the title thereof and rendering it fit for occupation; that no person has interrupted him in his occupation; that such occupation and disbursements on account of such property have been made with the knowledge and consent of said company, and without objection on behalf of said company.

And this defendant, further answering, shows that, as he is informed and believes, the said company defendant, after having been fully advised by the said complainant of the facts in said bill of complaint in this cause set forth, and after having examined a copy of the bill of complaint then on file in this court in a cause therein depending,
62 wherein Newcomb Cleveland was complainant and these defendants & Byron Kilbourn & Selah Chamberlain were defendants, and the answer of Moses Kneeland thereto, and after a full and thorough examination of the property and the improvements thereon by its directors and a committee appointed thereto by a resolution of its board of directors, a copy whereof is hereunto annexed, marked Exhibit A, and made part of this answer, passed on the tenth day of March, 1858, confirmed said sale to said Nash and to said Kneeland and to his heirs and assigns, and delivered a copy of such resolution to this defendant.

This defendant, further answering, denies upon information and belief that such confirmation was made to hinder, delay, or defraud the creditors of said company, defendants, and charges that it was made with the sole purpose of removing any doubt which there might be as to the title of the said defendants to the said premises.

And this defendant prays the same benefit and advantage of said confirmation as if he had specially plead the same in bar of this action; without that any other matter in said bill contained and not herein and hereby confessed or avoided, traversed or denied, is true to the knowledge and belief of this defendant.

E. MARINER,
In person.

63 DISTRICT OF WISCONSIN, *ss:*

This 7th day of January, A. D. 1861, before me, came E. Mariner, & made oath that he had read the foregoing answer by him subscribed, and that the same was true of his own knowledge except as to the matters therein stated to be of information & belief, and as to those he believes it to be true.

EDWARD KURTZ,
U. S. Com'r.

Replication.

MARCH 12, 1861.

This day came the complainants, by their solicitors, and filed their replication to the answers on file, as follows:

U. S. district court, district of Wisconsin. In equity.

LAWRENCE G. GARDNER & DONALD D. SCOTT
vs.
THE LA CROSSE & MILWAUKEE R. R. CO., Moses Kneeland, James Ludington, Ephriam Mariner, Byron Kilbourn, & Selah Chamberlain.

The replication of Lawrence G. Graham & Donald D. Scott, complainants' to the separate answers of James Ludington, Moses Kneeland, & Ephraim Mariner.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto say, that they will aver &
64 prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing, whatsoever in the said answers contained material or effectual in the law to be replied unto, confessed, and avoided, traversed, or denied is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

MAT. H. CARPENTER,
Compl'ts' Sol'r.

JUNE 6, 1861.

This day came the complainants, by their counsel, and on their motion and by consent, it is ordered by the court that the time for taking testimony be, and hereby is extended to both parties until the first Monday of August next.

Transferred to circuit court U. S. Chancery docket A. Page 111.
October 1, 1862, transferred and continued from the district court of the U. S.
Chancery docket L, page 61.

65 NOVEMBER 13TH, 1863.

This day came E. Mariner and filed stipulation signed by himself and Mathew H. Carpenter, solicitor for complainants, as follows:

Dismissed as to E. Mariner.

U. S. circuit court, district of Wisconsin.

LAWRENCE G. GRAHAM & DONALD D. SCOTT
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company, Moses Kneeland, James Ludington, and Ephraim Mariner.

It is hereby stipulated and agreed that the above-entitled cause be dismissed without costs to either party as to E. Mariner.

Nov. 5th, 1863.

MAT. H. CARPENTER,
Sol'r for Compl't.

DECEMBER 20TH, 1863.

This day came the defendant, Byron Kilbourn, by E. Mariner, his solicitor, and filed his separate answer.

APRIL 22, 1864.

This day came the parties by their counsel, and the complainants by their counsel moved the court on affidavit filed to enlarge the time to take testimony in this cause, and the same having been argued by counsel, it is ordered by the court that said motion be, and the same is, overruled and denied.

Suggestion of death of M. Kneeland.

APRIL 23, 1864.

This day came the complainants by their counsel, Mr. Carpen-
66 ter, and suggest the death of Moses Kneeland, one of the defendants in this cause, and on their motion it is ordered by the court that said complainants have leave to revive said cause against the heirs or representatives of said Moses Kneeland, deceased, as they may be advised.

And it is further ordered that said cause be and the same is continued.

This day also came the complainants by their counsel and file their replication to the answer of Byron Kilbourn.

SEPTEMBER 12, 1864.

This day came the complainants by their solicitor and filed their bill of revivor, as follows:

Bill of revivor.

To the judges of the circuit court of the United States of America for the ninth circuit & district of Wisconsin, in equity.

Lawrence G. Graham & Donald D. Scott, subjects of the Queen of Great Britain & Ireland, aliens, bring this their bill of revivor against The La Crosse & Milwaukee Railroad Company, James Ludington, Byron Kilbourn, Selah Chamberlain, and James Kneeland, administrator of the goods, chattels, & estate of Moses Kneeland, deceased, all said defendants being citizens of the State of Wisconsin except Selah Chamberlain, who is a citizen of the State of Ohio, & thereupon your orators complain & say:

That on the 2d day of June, 1860, they exhibited their bill of complaint on the equity side of the district court of the United States
67 for said district against the La Crosse & Milwaukee Railroad Company, Moses Kneeland, James Ludington, Ephraim Mariner, Byron Kilbourn, Selah Chamberlain, defendants, thereby stating several matters & things as are there therein for that purpose more particularly mentioned and set forth, & praying, &c.

That process of subpœna was duly issued to all of said defendants to

said original bill & that all said defendants appeared & answered thereto, or such proceedings were had as entitled your orators to an order taking said bill as confessed; and that the said suit continued pending against all of said defendants except Ephraim Mariner until on or about the 1st day of February, A. D. 1864, when the said Moses Kneeland, one of said defendants, departed this life at his then residence, in the city of Milwaukee, in said district.

That the said James Kneeland has been duly and properly constituted & appointed administrator of the goods, chattels, & estate which were of the said Moses Kneeland, deceased, by the county court for the county of Milwaukee, in the State of Wisconsin, having probate powers and jurisdiction in that behalf, and has duly qualified & entered upon the performance of the duties of his said appointment, and is now acting as such and has thus become and now is the legal personal representative of the said Moses Kneeland, deceased.

68 And your orators further show that the said suit & proceedings have become defective by the death of the said Moses Kneeland and abated as to him, & your orators are entitled to have the said suit & proceedings revived against all the said defendants named as such in this bill of revivor & to have the said suit & proceedings put in the same state and condition as the same were in previously to the death of the said Moses Kneeland.

To the end, therefore, that the said defendants The La Crosse & Milwaukee Railroad Company, James Ludington, Byron Kilbourn, Selah Chamberlain, & James Kneeland, administrators as aforesaid, may answer the premises, & that the said suit & proceedings which so became defective & abated as aforesaid may stand revived & be in the same plight & condition as the same were in at the time of the death of the said Moses Kneeland or that the said defendants may show cause to the contrary,

May it please your honors to grant unto your orators the most gracious writ of subpœna to revive as aforesaid, issuing out of & under the seal of said court, to be directed to the said La Crosse & Milwaukee Railroad Company, James Ludington, Byron Kilbourn, Selah Chamberlain, & James Kneeland, administrator as aforesaid, thereby commanding them & each of them at a certain day & under a certain to

69 be named therein personally to appear before your honors in said circuit court & then & there to show cause, if they or either of them can, why the said suit & proceedings should not be & stand revived against them & be in the same plight & condition as the same were at the time of the death of the said Moses Kneeland, & further to stand to and abide by such order & decree in the premises as to your honors shall seem meet; & your orators will ever pray, &c.

MATT H. CARPENTER,
Sol. for Complainant.

MATT H. CARPENTER,
Of Counsel.

Whereupon a subpœna was issued, returnable on the first Monday of October next, as follows:

70 [50-cent int. rev. stamp cancelled.]

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States of America to the La Crosse & Milwaukee Railroad Company, James Ludington, Byron Kilbourn, Selah Chamberlain, & James Kneeland, administrator of Moses Kneeland, deceased, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America, for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of October next ensuing, at Milwaukee, to answer to a bill of complaint, exhibited against you in our said court, by Lawrence G. Graham and Donald D. Scott. And to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said The La Crosse & Milwaukee Railroad Company, James Ludington, Byron Kilbourn, Selah Chamberlain, & James Kneeland, administrator of Moses Kneeland, deceased, if to be found in his district, and due return thereof make.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this twelfth day of September, in the year of our Lord one thousand eight hundred and sixty-four, and of our Independence the eighty-ninth.

A. SCOTT SLOAN, *Clerk.*

MATT H. CARPENTER,
Solicitor.

It is ordered by our said court that the said The La Crosse & Milwaukee Railroad Company, James Ludington, Byron Kilbourn, Selah Chamberlain, and James Kneeland, administrator of the estate of Moses Kneeland, deceased, the defendant aforesaid, do enter their appearance in this suit in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed. And they are further required to show cause, if they or either of them can, why the said suit & proceedings should
71 not be & stand revived against them & be in the same plight & condition as the same were at the time of the death of the said Moses Kneeland.

Return.

Subpœna returned.

Served on the within named James Ludington, Byron Kilbourn, James Kneeland, the 14th day of Sept., 1864; served on the within named Selah Chamberlain this 26th day of Sept., A. D. 1864, by showing them this subpœna and delivering each of them personally a copy thereof.

D. C. JACKSON,
Marshal.

Fees, $11.50.

72 *Rule to plead.*

JANUARY 2, 1865.

This day came the complainants by their solicitor and entered their rule that the defendants plead, answer, or demur to the bill of revivor in this cause on or before the first Monday of February next.

JANUARY 3, 1865.

This day came the complainants by their counsel, and on their motion it is ordered by the court that this cause be, and the same hereby is, continued.

JANUARY 3, 1866.

This day came the defendants by their counsel, and on their motion it is ordered by the court that this cause be, and the same hereby is, continued.

Order allowing complainants to amend.

OCTOBER 2, 1866.

This day on motion of the complainants' solicitor it is ordered that the said complainants have leave to amend their bill of complaint as they may be advised and by making new parties defendants with apt words to charge them.

Bill dismissed as to Kilbourn.

NOVEMBER 24, 1866.

This day came the complainants' counsel and filed his dismissal of the bill as to the defendant Kilbourn, as follows:

U. S. circuit court, dist. Wisconsin.

LAWRENCE G. GRAHAM ET AL.
vs.
73 BYRON KILBOURN, THE LA CROSSE & Milwaukee Railroad Co. et al.

Let this suit be discontinued as to the def't Kilbourn, without costs to either party.

M. H. CARPENTER,
Sol. for Compl't.
E. MARINER,
Def'ts Sol'r.

A. SCOTT SLOAN, Esq., *Clerk, &c.*

JANUARY 9, 1867.

This day came the parties by their counsel and by consent this cause is continued.

Order extending time to amend bill.

OCTOBER 7, 1867.

This day came the complainants by their counsel, and on their motion it is ordered by the court that the time for them to amend their bill

by making new parties, &c., be and hereby is extended until the first Monday of November next.

JANUARY 8, 1868.

This day came the complainants by their counsel, and on their motion it is ordered by the court that the leave heretofore given them to amend their bill as they may be advised be and hereby is extended to the first Monday of April next.

SEPTEMBER 14, 1868.

Substitution of N. S. Murphey as complainants' solicitor, and H. S. Orton of counsel for complainant, filed as follows:

U. S. circuit court, district of Wisconsin.

74 LAWRENCE G. GRAHAM & DONALD D. SCOTT *vs.* THE LA CROSSE & MILWAUKEE RAILROAD COMPANY & others, defendants. } In equity.

I consent that H. S. Orton & N. S. Murphey may be substituted counsel & solicitor respectively for the complainants in the above entitled action.

Sept. 14, 1867.

MATT H. CARPENTER,
Sol. for Compl'ts.

And same day (September 14, 1868) came the complainants by their counsel, and by leave of the court filed a supplemental bill making the Milwaukee & St. Paul Railway Company a party defendant as follows:

75 To the judges of the circuit court of the United States of America for the district of Wisconsin.

Lawrence G. Graham & Donald D. Scott, subjects of the Queen of Great Britain & Ireland, aliens, bring this their supplemental bill against the La Crosse & Milwaukee Railroad Company, James Ludington, James Kneeland, administrator of the estate of Moses Kneeland, deceased, and the Milwaukee & St. Paul Railroad Company, defendants, leave of the court for that purpose being first had & obtained, all said defendants being citizens of the State of Wisconsin.

Your orators complain & say that on the 2d day of June, 1860, they exhibited their original bill on the equity side of this court against the La Crosse & Milwaukee Railroad Company, Moses Kneeland, James Ludington, Ephraim Mariner, Byron Kilbourn, & Selah Chamberlain, stating in substance among other things that on the 21st day of September, 1858, in the second judicial circuit for the State of Wisconsin, in the county of Milwaukee, they recovered a judgment against the said La Crosse & Milwaukee Railroad Company, defendant, for the sum of $11,188.11 damages & costs; & on the 25th day of November,
76 1858, in the same court, recovered another judgment against said railroad company, defendant, for the further sum of $29,828.71 damages & costs. And that on the 26th day of November, 1859, writs of execution were in due form of law issued upon said judgments, directed to the sheriff of Milwaukee County, by virtue of which, on the 29th day of November, 1859, the said sheriff levied upon certain

real estate in the said county of Milwaukee, a correct description whereof is set forth in said bill as follows, to wit: lots one, two, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, & fourteen, in block one hundred & fifty-five; lots one & four, in block one hundred & fifty-six; also the undivided one-half part, except lot eight, of block one hundred & fifty seven; also the bayou adjoining said last mentioned block, & thence running to the Milwaukee River; also the undivided one-third parts of lots eight, nine, sixteen, & seventeen, in block one hundred & fifty-eight; also lots ten, twelve, thirteen & fourteen, & the east half of lot fifteen, in block one hundred & fifty-eight, all in the 4th ward; also lots nine, ten, & eleven, in block three, & lots one,
77 two, & three in block forty-seven, in the 5th ward of the city of Milwaukee, Wisconsin, as the property of the defendant La Crosse & Milwaukee Railroad Company.

That said judgments remained, & were & are now wholly unpaid, & said judgments wholly unreversed & unannulled. That your orators, on the 11th day of January, 1860, recovered a judgment against said railroad company defendant, upon & on account of said judgments in the district court of the United States for the district of Wisconsin, for the sum of $44,392.32, which last named judgment then remained wholly unsatisfied & unreversed, & that on the 26th day of January, 1860, a writ of fieri facais in due form of law was issued upon said judgment, & directed & delivered to the marshal of said district, by virtue whereof, on the 27th day of January, 1860, said marshal duly levied the same upon the said real estate above described.

And your orators further state that said original bill further set forth that on the 15th day of June, 1856, the said company defendant was seized in fee of each & every of said lots of land, & that said lands were then of the value of $100,000 & upwards; that Byron Kilbourn, Moses Kneeland, & James Ludington were three of the directors of
78 said railroad company defendant, at that time, & that on the day last aforesaid, said Moses Kneeland & James Ludington were appointed by the board of directors of said company, or by the executive committee of said board (which said board was composed of said Kilbourn, Ludington, & Kneeland & others), a committee to sell & dispose of said land, & that said Kilbourn & Ludington then & there intending to defraud said company & its creditors, & to acquire to themselves or to some other person, by a violation of their duties as directors, the said lands for a greatly inadequate price, did sell & transfer the same to one C. D. Nash, for the nominal consideration of $20,000 in bonds or stock of said company; but said Kilbourn, Ludington, & Kneeland, or one of them, furnished whatever said Nash paid or pretended to pay for said lots, & that said sale was made with the secret & fraudulent understanding between said Nash & said Kilbourn, Kneeland, & Ludington, or one of them, that said Nash should thereafter when requested convey the said lots to said Kilbourn, Kneeland, & Ludington, or one of them, for the benefit of said Kilbourn, Kneeland, & Ludington
79 for a nominal consideration; that said Nash was wholly disinterested in said pretended sale to him, & that soon thereafter, in pursuance of said fraudulent understanding, said Nash did convey said lands to said Moses Kneeland for no consideration or some nominal consideration, & that said Kneeland soon thereafter conveyed an equal one undivided one-third part thereof to said Ludington for no consideration & in pursuance of said fraudulent understanding; & that said Kneeland then held the record title to two-thirds of said lands; that said Kneeland, Kilbourn, & Ludington then pretended to hold said lands then

worth $200,000 in fraud of your orators' rights as creditors, & in violation of their duty as directors of said company, & that the same ought to be applied to the payment of your orators' said judgments, & that said conveyances were a cloud upon your orators' right to sell said lands on said writ of fieri facias.

And your orators further show that this suit has been discontinued as to the defendants, Epraim Mariner, Byron Kilbourn, & Selah Chamberlain.

80 And said original bill prayed that said lots might be decreed to be subject to levy & sale under said fieri facias, & that said Kneeland, Kilbourn & Ludington might be decreed to join in a conveyance thereof to the purchaser, & that they be enjoined from selling or otherwise disposing of the same or any part thereof, also the usual prayer for a subpœna, &c.

And your orators further show that all of the said defendants, except the defendants the La Crosse & Milwaukee Railroad Company & Selah Chamberlain appeared & answered said bill, & your orators replied to the same.

And your orators further state that after the commencement of this suit the defendant, the Milwaukee & St. Paul Railroad Company, with full & complete notice & knowledge of the facts aforesaid, for no consideration or some nominal consideration, the particulars whereof are unknown to your orators, took & received a conveyance or conveyances of all of the real estate above described from the said Kilbourn, Keeland, Ludington, Nash, Mariner, or some or one of them, & now holds the same in fraud of the rights of said company, defendant, & the rights of

81 your orators as creditors of said company. And your orators are advised that they are entitled to the same relief against the said Milwaukee & St. Paul Railroad Company as they would have been against the said Kneeland, Kilbourn, Ludington, or Mariner.

To the end therefore & that your orators may have the full benefit of such suit & proceedings against the said Milwaukee & St. Paul Railroad Company, & may have the same relief against the said La Crosse & Milwaukee Railroad Company, James Ludington, & James Kneeland as administrator of the estate of Moses Kneeland, deceased, or that your orators may have such other or further relief in the premises as to your honors shall seem meet,

May it please your honors to grant unto your orators a writ of subpœna issuing out of & under the seal of this court, to be directed to the said Milwaukee & St. Paul Railroad Company, defendant, commanding it by a certain day & under a certain penalty therein to be named & inserted, to be & appear in said court at the court-house of said court in the city of Milwaukee, in said district, & then & there to answer the premises & further to stand to & abide such order & decree therein as shall be agreeable to equity & good conscience, & your orators will ever pray, &c.

N. S. MURPHEY,
Sol's'r for Compl'ts.

H. S. ORTON,
Of Counsel.

82 Whereupon a subpœna issued against said Milwaukee & St. Paul Railway Co. returnable the first Monday of October next, as follows:

Subpœna.

83 UNITED STATES OF AMERICA,
District of Wisconsin:

The President of the United States of America to the Milwaukee & St. Paul Railway Company, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America, for the district of Wisconsin, in our court of chancery in and for the district aforesaid, on the first Monday of October next ensuing, at Milwaukee, to answer to a supplemental bill of complaint exhibited against you in our said court by Lawrence G. Graham & Donald D. Scott, and to do further and receive what our said court shall have considered in that behalf, and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said The Milwaukee & St. Paul Railway Company, if to be found in his district, and due return thereof make.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this fourteenth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, and of our Independence the ninety-third.

[SEAL.] EDWARD KURTZ, *Clerk.*

N. S. MURPHEY,
Solicitor.

It is ordered by our said court that the said The Milwaukee & St. Paul Railway Company, the defendant aforesaid, do enter its appearance in this suit in the clerk's office on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

84 *Return.*

Subpœna returned.

Served on the within-named Milwaukee and St. Paul Railway Company by showing this subpœna to A. Cary, secretary of said company, and by giving to him personally a copy thereof this 19th day of September, A. D. 1868, and served on the within-named Milwaukee and St. Paul Railway Company by showing this subpœna to Alexander Mitchell, president of said company, and by delivering to him personally a copy thereof this 21st day of September, A. D. 1868.

CASSIUS FAIRCHILD,
Marshal,

By A. C. JACKSON,
Deputy.

Fees $4.86.

85 *Appearance of M. & St. P. R'y Co.*

SEPTEMBER 22, 1868.

This day came the defendant, Milwaukee & St. Paul Railway Company, by its solicitor, Mr. John W. Cary, and filed its appearance as follows:

Circuit court for the United States, 7th circuit & district of Wisconsin

LAWRENCE G. GRAHAM & DONALD D. SCOTT
vs.
MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Please enter my appearance for the defendant Milwaukee & St. Paul Railway Company, & furnish me a copy of the complaint.

Yours, &c.,

JOHN W. CARY,
Solicitor for Def't M. & St. R'y Co.

Rule to plead.

NOVEMBER 2, 1868.

On motion of N. S. Murphey, solicitor for the complainants, it is ordered that the defendant, the Milwaukee & St. Paul Railway Company, plead, answer or demur to the supplemental bill of complaint filed herein by the first Monday of December, 1868, or that in default thereof said bill be taken as confessed.

Motion of Mil. & St. Paul R'y Co. to set aside order allowing sup'l bill to be filed, & order overruling same.

DECEMBER 7, 1868.

This day came the defendant, The Milwaukee & St. Paul Railway Company, by its counsel, and moved the court on affidavit filed to set aside the order allowing the filing of the supplemental bill, and
86 that said supplemental bill be dismissed.

And being submitted, it is ordered by the court that the said motion be and hereby is overruled.

APRIL 8, 1869.

This day came the defendant, The Milwaukee & St. Paul Railway Company, by its solicitor, and files its answer as follows:

Answer of Mil. & St. P. Co.

Circuit court of the United States for the 7th circuit and district of Wisconsin. In equity.

The answer of the Milwaukee and St. Paul Railway Company to the supplemental bill of complaint of Lawrence G. Graham and Donald D. Scott, complainants, against said Milwaukee and St. Paul Railway Company, impleaded with James Ludington and James Kneeland, administrator of the estate of Moses Kneeland, deceased, defendants.

The said defendant Milwaukee and St. Paul Railway Company, now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said supplemental bill of complaint contained, for answer thereunto or unto so much or such parts thereof as this defendant is advised is material for it to make answer unto, it answers and says, that since the filing of said supplemental bill of complaint it has been informed that said complainants did, at the time men-

87 tioned in said supplemental bill of complaint, exhibit their original bill of complaint in this court against the La Crosse and Milwaukee Railroad Company, Moses Kneeland, James Ludington, Ephraim Mariner, Byron Kilbourn, and Selah Chamberlain, alleging in substance as is set forth in said supplemental bill of complaint.

And this defendant has further been informed that said bill of complaint has been dismissed as to the defendants Ephraim Mariner, Byron Kilbourn, and Selah Chamberlain; that said original bill prayed as stated in said supplemental bill of complaint, and that all the defendants except the La Crosse and Milwaukee Railroad Company and Selah Chamberlain appeared and answered said bill, and that said answers were replied to by said complainants; that this defendant first received the foregoing information from the said supplemental bill of complaint, and has since been further informed in regard thereto by an examination of the record and proceedings in said original suit, but this defendant denies that it had any knowledge, information, or belief as to any of said matters and proceedings prior to the filing of said supplemental bill of complaint.

And this defendant, further answering, admits that in the year 1864 this defendant purchased and became the owner of the following lots and parcels of land, to wit: all of block one hundred and fifty-

88 five except lot three; lots one and four of block one hundred and fifty-six; one-eighth part of the bayou so called, lying west of Reed street, and one-eighth of block one hundred and fifty-seven except lot eight; one-third of lots eight, nine, sixteen, and seventeen of block one hundred and fifty-eight, and lots ten, twelve, thirteen, fourteen, and the east half of fifteen of block one hundred and eighty-eight of the fourth ward; and lots one, two, and three of block forty-seven in the fifth ward of Milwaukee, being a part of the premises described in said bill of complaint, and says that on said purchase and in consideration of the conveyance to this defendant of the title to said lots and premises, this defendant paid to its grantors thereof over fifty-four thousand dollars; that said purchase was made of Daniels Wells, jr., and wife, James Ludington, John G. Flint and wife, Ephraim Mariner and wife, W. S. Chandler and wife, James L. Sexton and wife, Frances Kneeland, State Bank of Wisconsin, Charles K. Wells and wife, Clark Shepardson and wife, James R. Warner and wife, Edwin H. Goodrich, James Kneeland and wife, John W. Pixley, and Jerome R. Brigham and wife; that as this defendant is informed and believes the said persons last named were then, or some or one of them were the legal owners or owner of said premises, and had good and lawful right to convey the same.

89 That the consideration paid by this defendant for said conveyance was a good, ample, and full compensation for said premises, and all or more than they were then worth, and this defendant denies that it made said purchase or took said conveyance with full and complete notice and knowledge of the facts stated in said supplemental bill of complaint or with any notice or knowledge thereof whatever; and it further absolutely denies that it took or received said conveyance or conveyances for no consideration or for a mere nominal consideration, but on the contrary says that it paid the consideration of fifty-four thousand dollars therefor, and that said sum was a full, complete, and adequate compensation therefor.

And this defendant further says on information and belief that said La Crosse and Milwaukee Railroad Company was on the 8th day of September, 1855, the owner of an interest in the whole or a part of said premises

subject to several liens and incumbrances, and that on or about the eighth day of September, 1855, the said La Crosse and Milwaukee Railroad Company, for and in consideration of the sum of twenty-five thousand dollars to it paid by one Charles D. Nash, conveyed by quitclaim all its right, title, and interest of, in, and to said lots, lands and premises in said supplemental bill of complaint mentioned to said Charles D. Nash, and
90 that said sum of twenty-five thousand dollars was a full, complete and adequate consideration therefor, and all that the interest of said La Crosse and Milwaukee Railroad Company in said lots, lands and premises was then worth. That afterwards and on the twenty-fourth day of September, 1855, the said Charles D. Nash, by deed of quitclaim, in consideration of fifteen thousand dollars, conveyed said interest to Moses Kneeland, and that said Moses Kneeland subsequently and on the 31st day of October, 1855, in consideration of five thousand dollars, conveyed by deed of quitclaim one-third of said interest to James Ludington. That afterwards and on the 10th day of April, 1857, the said Kneeland by deed of quitclaim conveyed one other third of said interest to Edwin H. Goodrich, and that said Edwin H. Goodrich, afterwards, and on the 18th day of November, 1857, conveyed the interest so acquired by deed of quitclaim to Ephraim Mariner.

That at the time of said conveyance to said Charles D. Nash, on the 8th day of September, 1855, the Bridgeport Savings Bank held a mortgage given by the Milwaukee, Fond du Lac and Green Bay Railroad Company, for the purchase money thereof, on lot one, block 156, lots 4–7 and 10 of block 155, and lots 12–14 and east half of 15 of block 158. That said mortgage was foreclosed in the circuit court for Milwaukee County, the said complainants being parties defendants thereto, and said lots sold
91 by the sheriff of Milwaukee County to said bank, on the 7th day of February, 1860, for $\$490\frac{31}{100}$ and that this defendant now holds said lots as the grantee of said bank and also of certain tax-titles thereon.

And this defendant, further answering, says that on the 24th day of May, A. D. 1859, and after said Kneeland, Ludington and Goodrich had all ceased to be directors in said La Crosse and Milwaukee Railroad Company, and after the board of directors of said La Crosse Company were fully aware of said sale to said Nash, and by said Nash to said Kneeland, and from Kneeland to Ludington and Goodrich, said board of directors of said La Crosse and Milwaukee Railroad Company by resolution expressly ratified said sale and executed to said Kneeland and Ludington a deed of confirmation of said sale, as will more fully appear by the records of said company and the records of said deeds now remaining in the register's office of Milwaukee County, reference thereto being had and to which said defendant for greater certainty prays leave to prefer. All of which took place and was of record before the filing of said complainants' original bill of complaint in this cause.

And this defendant claims the same benefit thereof as if it had pleaded the same in bar of the said complainants' said supplemental bill of complaint.

And this defendant, further answering, says that its purchase of most of said lots and premises were made by conveyances made by the
92 owners thereof to Russell Sage, as trustee in fact for this defendant, and were afterwards by said Russell Sage conveyed to this defendant. That prior to the time when said conveyances were so made to said Russell Sage, the several owners of said premises had failed to pay the taxes thereon, and tax-titles had been acquired to the whole of said premises, and that said titles were then held in severalty by Daniels

Wells, jr., The State Bank of Wisconsin, Charles K. Wells, Clark Shepardson, James Warner, John W. Pixley, and Jerome R. Brigham, and their said deeds were then of record in the register's office of Milwaukee County, and that said persons last named, for a valuable consideration to them in hand paid by this defendant, severally conveyed said premises to the said Russell Sage, who subsequently conveyed the same to this defendant, and that thereby this defendant acquired the absolute legal title to said premises free and clear of all claim or pretended equity of said complainants.

That this defendant has been in the actual and peaceable possession of said premises under said last-named titles for more than three years before the filing of said supplemental bill of complaint, and this defendant claims the same benefit and advantage therefrom as if it had pleaded said title in bar of the said complainants' said supplemental bill of complaint.

And this defendant, further answering, says that since its purchase of said premises as aforesaid, relying upon the validity of its title
93 thereto, it has made extensive and valuable improvements thereon at great cost and expense and rendered said property of great value, that it now constitutes a part of the depot grounds of said defendant in the city of Milwaukee and is occupied in part by the depot buildings of said defendant.

And this defendant, further answering, claims the same benefit and advantage from the answers now on file to the original bill of complaint as it could have if the same were here again repeated, and denies all combination and confederacy in the said bill charged, without that any other matter or thing in the said supplemental bill contained, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant, and humbly prays to be hence dismissed and its reasonable costs and charges in this behalf most wrongfully sustained.

JOHN W. CARY,
Solicitor & of Counsel for M. & St. P. R'y Co.

DISTRICT OF WISCONSIN, *ss:*

Be it remembered that on the eighth day of April, A. D. 1869, personally appeared before me Alonson Cary, and made oath that the Milwaukee and St. Paul Railway Company, the defendant named in and who makes the foregoing answer, is a corporation, and that he is one of the officers thereof, to wit, its secretary; that he has read the foregoing answer and knows the contents thereof; and that the same is
94 true to his own knowledge, except as to those matters stated upon information and belief, and as to those matters he believes it to be true.

EDWARD KURTZ, *Clerk.*

Replication to answer of Mil. & St. P. R'y Co.

APRIL 17, 1869.

This day came the complainants by their solicitor and filed their replication, as follows:

Circuit court of the United States for the district of Wisconsin.

LAWRENCE G. GRAHAM & DONALD D. SCOTT
vs.
THE MIL. & ST. PAUL RAILWAY COMPANY ET als. } In chancery.

The replication of Lawrence G. Graham and Donald D. Scott, complainants, to the answer of The Milwaukee & Saint Paul Railway Company, as defendant.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer to the complainants' supplemental bill of complaint, for replication thereunto says that they will aver, maintain, and prove their supplemental bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto
95 by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true, all *all* which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by their said bill and supplemental bill they have already prayed.

N. S. MURPHEY,
Sol. for Compl't.

STATE OF WISCONSIN,
Walworth County, ss:

On this 16th day of April, A. D. 1869, personally appeared before me Lawrence G. Graham, one of the complainants herein, and made oath that he has read the above and foregoing reply and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated to be on the information and belief of the complainants; as to those matters the deponent believes it to be true. . . . . .

LAWRENCE G. GRAHAM.

Subscribed & sworn to before me this 16th day of April, A. D. 1869.
[SEAL.]
T. D. WEEKS,
Notary Public, Wal. Co., Wis.

AUGUST 23, 1869.

96 On motion of N. S. Murphey, complainants' solicitor, it is ordered that this cause be set down for hearing at the next term of this court, commencing on the second Monday of September next.

AUGUST 23, 1870.

On motion of N. S. Murphey, solicitor for the complainants, it is ordered that this cause be set down for hearing at the next term of this court, to commence on the 1st Monday of October, 1870, on bill, answers, replications, & proofs.

AUGUST 8, 1871.

And now come the complainants, by N. S. Murphey, their sol'r, & on motion it is hereby ordered that this cause be set down for hearing at the next term of this court, to wit, the first Monday of October, 1871.

JANUARY 13, 1872.

This day came the complainants, by their counsel, and on their motion it is ordered by the court that the time for taking testimony be and hereby is extended on both sides to the first day of July next.

JULY 2, 1872.

This day came the complainants, by their counsel, and by leave of the court filed their supplemental bill of complaint, making Sarah O. Chandler, Ellen C. Sexton, Frances Flint, and Moses Burr Kneeland additional parties defendant herein, as follows:

97 *Supplemental bill making Sarah O. Chandler et al. def'ts.*

To the judges of the circuit court of the United States of America for the eastern district of Wisconsin.

Lawrence G. Graham and Donald D. Scott, subjects of the Queen of Great Britain & Ireland, aliens, bring this their supplemental bill against The La Crosse & Milwaukee Railroad Company, James Ludington, James Kneeland, administrator of the estate of Moses Kneeland, deceased, The Milwaukee & St. Paul Railroad Company, and Sarah O. Chandler, Ellen C. Sexton, Frances Flint and Moses Burr Kneeland, defendants, leave of the court for that purpose being first had & obtained, all said defendants being citizens of the State of Wisconsin & residents in the eastern district of Wisconsin.

Your orators complain & say that on the 2d day of June, 1860, they exhibited their original bill on the equity side of this court against The La Crosse & Milwaukee Railroad Company, Moses Kneeland, James Ludington, Ephraim Mariner, Byron Kilbourn & Selah Chamberlain, stating in substance among other things that on the 21 day of September, 1858, in the second judicial circuit for the State of Wisconsin, in the county of Milwaukee, they recovered judgment against the said La Crosse & Milwaukee Railroad Company, defendant, for the sum of
98 $11,188.11 damages & costs, & on the 25 day of November, 1858, in the same court recovered another judgment against said railroad company for the further sum of $29,828.71 damages & costs. And that on the 26th day of November, 1859, writs of execution were in due form of law issued upon said judgments directed to the sheriff of Milwaukee County, by virtue of which on the last mentioned day the said sheriff levied upon certain real estate situated in the city of Milwaukee, a correct description whereof is set forth in said original bill, & in the supplemental bill filed herein against the defendant, the Milwaukee & St. Paul Railway Company, as follows, to wit: Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14, in block 155; lots 1 & 4 in block 156; also the undivided one-half part except lot 8 of block 157; also the bayou adjoining said last mentioned block, & thence running to the Milwaukee River; also the undivided ½ parts of lots 8, 9, 16 & 17, in block 158; also lots 10, 12, 13 & 14 & the east half 15, in block 158, all in the fourth ward of the city of Milwaukee; also lots 9, 10, & 11 in block 3, & lots 1, 2 & 3 in block 47 in the fifth ward of the city of Milwaukee, in the State of Wis-

consin, as the property of the defendant, the La Crosse & Milwaukee Railroad Company.

99 That said judgments remain due and are now wholly unpaid & said judgments wholly unreversed and unannuled. That your orators on the 11th day of January, 1860, recovered a judgment against said railroad company, defendant, upon & on account of said judgments in the district court of the United States for the district of Wisconsin, for the sum of $44,392.32, which last named judgment now remains wholly unsatisfied & unreversed, & that on the 26th day of January, 1860, a writ of fieri facias in due form of law was issued upon said judgment, directed & delivered to the marshal of said district, by virtue whereof on the 27th day of January, 1860, said marshal duly levied the same upon the said real estate above described.

And your orators further show that said original bill further set forth that on the 15th day of June, 1856, the said railroad company was seized in fee of each & every of said lots of land; that said lots were then of the value of $100,000 & upwards; that Byron Kilbourn, Moses Kneeland & James Ludington were appointed by the board of directors of said company or by the executive committee of said board (which said board was composed of said Kilbourn, Ludington, Kneeland &

100 others) a committee to sell & dispose of said land, & that said Kilbourn & Ludington then & there intending & contriving to defraud said company & its creditors & to acquire to themselves or some other person, by a violation of their duties as directors, the said land for a greatly inadequate price, did sell & transfer the same to C. D. Nash for the nominal consideration of $20,000 in bonds or stock of said company, but that said Kilbourn, Kneeland & Ludington or one of them furnished whatever said Nash paid or promised to pay for said lots & that said sale was made with the secret & fraudulent intent & understanding between said Nash & said Kilbourn, Kneeland & Ludington, or one of them, that said Nash should thereafter when requested convey the said lots to said Kneeland, Kilbourn & Ludington, or one of them, for the benefit of said Kneeland, Kilbourn & Ludington for a nominal consideration; that said Nash was wholly disinterested in the said pretended sale to him, & that soon thereafter, in pursuance of said fraudulent understanding, said Nash did convey said lands to said Moses Kneeland for no consideration or some nominal consideration, & that said Kneeland soon thereafter conveyed an equal one undivided third part thereof to said Ludington for no consideration & in pursuance of

101 said fraudulent understanding, & that said Kneeland then held the record title to two-thirds of said lots; that said Kneeland, Kilbourn & Ludington, then pretending to hold said lands, then worth $200,000 in fraud of your orators' rights as creditors & in violation of their duty as directors of the said railroad company & that the same ought to be applied to the judgment of your orators' said judgments, & that said conveyances were a cloud upon your orators' right to sell lands on said writ of fieri facias.

And your orators further show that this suit has been discontinued as to the defendants, Ephraim Mariner, Byron Kilbourn, & Selah Chamberlain. And the said original bill prayed that said lots might be decreed to be subject to and sold under said fieri facias, & said Kneeland & Kilbourn & Ludington might be decreed to join in a conveyance thereof to the purchaser, & that they be enjoined from selling or otherwise disposing of the same or any part thereof; also the usual prayer for a subpœna, &c.

And your orators further show that all said defendants, including

said Mariner, appeared, except the said La Crosse & Milwaukee Railroad Company & Selah Chamberlain, and answered said bill, & your orators replied to the same.

102 And your orators further allege that after the commencement of this suit, to wit, about the month of July, 1864, the defendant, the Milwaukee & St. Paul Railway Company, purchased the said lots from said Ludington & said Mariner, taking deeds of full covenant of warranty from them & quitclaim deeds of a one-third part thereof from the heirs at law of said Moses Kneeland, who died intestate in January, 1864, the said Ludington, Mariner, & the heirs of said Kneeland, respectively, then fraudulently claiming to be the owners of one-third part of said lots, the said railway company then & there having due notice & full knowledge of such fraudulent pretense & claim on the part of said Ludington, Mariner, & the heirs of said Kneeland, & that they nor had any of them any lawful right or title to said lots or any part thereof as against your orators; & the said railway company, in consideration of such conveyances, on or about the day last aforesaid paid to said Ludington, Mariner, & Kneeland's heirs in equal proportions over $54,000.

And your orators say that by leave of this court, on September 14, 1868, they filed a supplemental bill herein against said defendant, the Milwaukee & St. Paul Railway Company, setting forth in substance the facts hereinbefore set forth, and said railway company

103 afterwards, on the 8th day of April, 1869, appeared in pursuance of said supplemental bill & the subpœna issued thereon & served upon it & filed its answer thereto, to which your orators filed their replication.

And your orators further say that after the death of said Moses Kneeland, to wit, on 12th day of September, 1864, by leave of the court they filed a bill of revivor against the said defendants, & caused a subpœna to be issued & served upon James Kneeland, then the administrator of the estate of the said Moses Kneeland, deceased, duly appointed by the county court of Milwaukee County, & said other defendants, & James Kneeland was, on or about the date last aforesaid, duly made a party defendant herein, but has filed no answer to said bill, and the same has been taken as confessed against him, & said suit was thereby duly revived.

And your orators further say that said suit was discontinued by their solicitor on the 5 day of November, 1863, as to said defendant, Ephraim Mariner, but for what reason your orators are unable to state; that your orators say that they had no actual knowledge of such discontinuance till in the fall of the year 1868, & they allege, upon information & belief, that such discontinuance was either an inadvertence on the

104 part of their solicitor, or based upon some misapprehension of facts; & they are now advised & believe that *that* said Mariner is a necessary & proper party defendant herein, & should be substituted defendant by order of this court.

And your orators further allege that Sarah O. Chandler, Ellen C. Sexton, Frances Flint, and Moses Burr Kneeland are the sole children and heirs at law of said Moses Kneeland, deceased, and are the same identical parties who, as the heirs of said Moses Kneeland, deceased, in the year 1864 conveyed one undivided third part of said lots to the defendant, the Milwaukee & St. Paul Railway Company, and received therefor $18,000 and upwards; that said heirs are, as your orators are informed and believe, respectively over the ages of 21 years, and that by the judgment or decree of the county court of Milwaukee County made

on the 29th day of October, 1868, a final decree of settlement of the account of said James Kneeland as such administrator of the estate of said Moses Kneeland was made, and a final decree of distribution then made to said heirs of said Moses Kneeland, said county court then having jurisdiction to make such judgment & decree.

And your orators are advised that they are entitled to obtain a decree against said Sarah O. Chandler, Ellen C. Sexton, Frances
105 Flint, Moses Burr Kneeland, James Ludington, and Ephraim Mariner, that they account for and pay over to said complainants the value of said lots at the time of said conveyances, if this court shall determine that the complainants are not entitled to a decree subjecting said lots to a sale under a writ of fieri facias.

To the end therefore that your orators may have the full benefit of such suit & proceedings against the said Sarah O. Chandler, Ellen C. Sexton, Frances Flint, & Moses Burr Kneeland, and may have the same relief against the La Crosse & Milwaukee Railroad Company, James Ludington, James Kneeland, as administrator of the estate of Moses Kneeland, deceased, & The Milwaukee & St. Paul Railway Company, or that your orators may have such further or other relief as to your honors shall seem meet,

May it please your honors to grant unto your orators a writ of subpœna, issuing out of & under the seal of this court, to be directed to the said Sarah O. Chandler, Ellen C. Sexton, Frances Flint, & Moses Burr Kneeland, defendants, commanding them by a certain day & under a certain penalty therein to be inserted, to be and appear in said court, at the court-room of said court, at the city of Milwaukee in said
106 district, and then & there to answer the premises, & further to stand to & abide such order & decree therein as shall be agreeable to equity & good conscience; & your orators will ever pray, &c.

N. S. MURPHEY,
Sol'r for Compl'ts.

N. S. MURPHEY,
Of Counsel.

Whereupon a subpœna issued against them, returnable the first Monday of August next, as follows:

107 UNITED STATES OF AMERICA,
Eastern District of Wisconsin:

The President of the United States of America to Sarah O. Chandler, Ellen C. Sexton, Frances Flint, and Moses Burr Kneeland, impleaded with The La Crosse & Milwaukee Railroad Company, James Ludington, James Kneeland, administrator of the estate of Moses Kneeland, deceased, and The Milwaukee & St. Paul Railway Company, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the eastern district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of August next ensuing, at Milwaukee, to answer to a supplemental bill of complaint, exhibited against you in our said court by Lawrence G. Graham and Donald D. Scott. And to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Sarah O. Chandler, Ellen C. Sexton, Frances Flint, and Moses Burr Kneeland, if to be found in his district, and due return thereof make.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this second day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-sixth.

[SEAL.] EDWARD KURTZ,
Clerk.

CARPENTER & MURPHEY,
Solicitors.

It is ordered by our said court that the said Sarah O. Chandler, Ellen C. Sexton, Frances Flint, and Moses Burr Kneeland, the defendant' aforesaid, do enter their appearance in this suit in the clerk's office on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the said supplemental bill filed may be taken as confessed.

108 And same day (July 2, 1872) came the complainants, by their counsel, and on their motion it is ordered by the court that the time for taking testimony on both sides be and hereby is extended to the first day of October next.

Return.

Subpœna returned.
I hereby depute W. C. Brown to serve and return this writ.
C. S. HAMILTON,
Marshal.

Served on the within-named Sarah O. Chandler, Ellen C. Sexton, and Moses Burr Kneeland by delivering to each of them personally a copy of this subpœna, this 6th day of July, 1872, and served on the within-named Frances Flint by leaving a copy of this subpœna at her usual place of abode with a free white person, a member of the family, this 6th day of July, 1872.

C. S. HAMILTON,
Marshal,
By W. C. BROWN,
Special Deputy.

The above return sworn to & subscribed before me this 9th day of July, A. D. 1872.

C. H. HAMILTON,
Notary Public.

Fees, $9.90.

SEPTEMBER 2, 1872.

On motion of N. S. Murphey, solicitor for complainants, ordered that the defendants, Sarah O. Chandler, Ellen C. Sexton, Frances Flint, & Moses Burr Kneeland, plead, answer, or demur to the complainants' supplemental bill of complaint filed herein by the first Monday of October, 1872, or said bill will be taken as confessed against them.

SEPTEMBER 24, 1872.

109 This day came the defendants, Sarah O. Chandler, Ellen C. Sexton, Frances Flint, and Moses Burr Kneeland, by their solicitors, Messrs. Mariner, Smith & Ordway, and filed their plea, as follows:

Plea of S. O. Chandler et al.

Circuit court of the United States of America for the eastern dist. of Wisconsin.

The plea of Sarah O. Chandler, Ellen C. Sexton, Frances Flint, Moses Burr Kneeland, defendants, to the supplemental bill of Lawrence G. Graham & Donald D. Scott, filed the 2d day of July, 1872.

These defendants respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the complainants' said bill of complaint contained to be true in such manner and form as the same are therein & thereby charged and allege', for plea to so much & such parts of said bill as seek to charge these defendants or in any way hold them liable for any matter or thing therein averred or charged, say:

That said Moses Kneeland, in said supplemental bill averred to be a defendant in said original bill therein referred to & described, died intestate on the 21st day of January, 1864, in the city & county of Milwaukee, in said State of Wisconsin, leaving him surviving these defendants, his children & heirs, then & ever since residents & citizens of the State of Wisconsin, & within the jurisdiction of this court.

That said supplemental bill was not filed nor was any bill filed against said defendants or any of them, nor were these defendants or any
110 of them served with any writ or process of this honorable court within six years from the time the said compl'ts' said cause of action or suit (if any they had against these defendants, and which these defendants do in no sort admit) accrued, for said complainants in the said matter so in said bill averred & charged against the said defendants or any of them.

And the said defendants do aver & plead the statute of limitation, to wit, subdivision six (6) of section seventeen (17) of chapter one hundred and thirty-eight of the Revised Statutes of Wisconsin, & pray the benefit of such statute for the limitation of actions. All of which matters these defendants do aver & plead in bar of the complainants' said bill & of the relief by said bill sought against these defendants; and these defendants pray to be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.

MARINER, SMITH & ORDWAY,
Sol'rs for Def'ts.

E. MARINER, *Of Counsel.*

EASTERN DISTRICT OF WISCONSIN, *ss:*

Sarah O. Chandler, Ellen C. Sexton, Frances Flint, & Moses Burr Kneeland, each for her & himself, being duly sworn, say that the plea of the said defendants in & to so much & such parts of the supplemental bill as seeks to charge or in any manner hold them liable is not interposed for delay, & that the said plea is true in point of fact; & further saith not.

111 Subscribed & sworn before me this day of Sept'b'r, 1872.

I certify that in my opinion the plea of said defendants is well founded in point of law.

E. MARINER,
Of Counsel.

EASTERN DISTRICT OF WISCONSIN, *ss:*

Moses Burr Kneeland, one of the defendants above named, being duly sworn, says that he is acquainted with the facts related in the foregoing plea, and that said plea is true in point of fact and is not interposed for delay, & that he makes this affidavit in behalf of all the defendants in said plea, & from facts in his own knowledge.

M. B. KNEELAND.

Subscribed & sworn before me this 24th September, 1872.
EDWARD KURTZ, *Clerk.*

DECEMBER 2, 1872.

On motion of N. S. Murphey, solicitor for complainants, ordered that this cause be set down for hearing upon the plea of the above-named defendants to the supplemental bill filed herein against them by leave of court July 2d, 1872, for the term of this court commencing on the first Monday of January, 1873.

JANUARY 16, 1873.

This day the plea of the defendants, Sarah O. Chandler, Ellen C. Sexton, Frances Flint, and Moses Burr Kneeland, to the supple-
112 mental bill of complaint herein came on to be heard, and was argued by Mr. E. P. Smith, of counsel for said defendants, and by Mr. Murphey, for the complainants, and being submitted, the court held the same under advisement.

Order as to plea of S. O. Chandler et al.

JANUARY 17, 1873.

This day came the parties, by their counsel, and on consideration of the plea of the defendants, Sarah O. Chandler, Ellen C. Sexton, Frances Flint, and Moses Burr Kneeland, to the supplemental bill of complaint filed herein on the 2nd day of July, 1872, it is ordered by the court that said plea be and the same is hereby sustained and allowed so far as said bill seeks to charge and obtain from said defendants a personal account.

And it is further ordered that the complainants if they shall so elect, be permitted to amend their said supplemental bill on or before the first Monday in March, 1873, and that the time for taking testimony on both sides be extended to the first day of April next.

Affidavit of E. Mariner.

OCTOBER 26, 1872.

Affidavit of E. Mariner, on motion to substitute him as a defendant, filed as follows:

U. S. circuit court eastern dist. Wisconsin.

LAWRENCE G. GRAHAM ET AL.
vs.
JAMES LUDINGTON ET AL.

EASTERN DISTRICT OF WISCONSIN, *ss:*

113 Ephriam Mariner, being duly sworn, says that the bill in this cause was dismissed as to this deponent in pursuance of an agree-

ment between the complainants and the defendants, Kneeland, Ludington, & Mariner, which was negotiated by Moses Kneeland, deceased, A. Fleming, deceased, and Lawrence G. Graham; that such agreement was verbal, and was communicated to this deponent by said Moses Kneeland; that this deponent cannot now recall all of the terms of such agreement. One of them was that this cause should be dismissed as to the defendants, Kneeland, Ludington, & Mariner. That said Kneeland directed this deponent to call upon Hon. Matt H. Carpenter and procure from him a stipulation to dismiss the bill. That in pursuance of such direction deponent did call upon said Carpenter and request from him such stipulation. That said Carpenter informed this deponent that Graham distrusted said Kneeland and said Ludington, and feared that they would not comply with the agreement on their part after he had performed on his part, but that there would be no question but that the complaint would be dismissed if said Kneeland & Ludington performed the agreement.

That this deponent thereupon, after consultation with Kneeland & Ludington, insisted that the agreement be performed as to him-
114 self, or that the cause be pressed for hearing; that said Carpenter, as this deponent believes, with the knowledge of said Graham, thereupon agreed to dismiss the bill as to this deponent in part performance of said agreement; and upon the further agreement that this deponent should not further press the case for hearing, deponent consented, and the stipulation on file was thereupon executed.

That this deponent has, and said Kneeland and said Ludington have, so far as this deponent knows, *have* kept the agreement so entered into with said Graham & said Fleming with said Kneeland. This deponent cannot, after this lapse of time, positively state whether said Graham and Scott knew of the dismissal of said bill as to him at the time it was done, but he verily believes that they did know of it, and that deponent then knew in some way that they, said Graham & Scott, knew that the bill was dismissed as to this deponent.

That said complainant, Graham, was frequently at the office of his counsel in this cause; that this stipulation was only a partial performance of an agreement; that this deponent was informed said Graham had certainly made, and, so far as this deponent was concerned, there was no motive or occasion for concealment, nor so far as this deponent knows any reason for concealment on the part of Hon. Matt. H.
115 Carpenter, counsel for the complainants. On the contrary, as deponent then understood, there was rather occasion for congratulation that counsel had only discontinued the suit as to one defendant when the client agreed it should be discontinued as to all.

This deponent further says that since the execution of such stipulation he has paid six thousand dollars, part of the purchase price of said property, upon his paper, which was overdue in the hands of the payee which he would not paid except for such dismissal, and the statute of limitations has run against any claim he would have to recover it, and the payee has become entirely unable to repay him if he would.

This deponent further says that Charles D. Cooke, who would have been a material witness for this deponent, died before said suit was brought; that Moses Kneeland, Byron Kilbourn, and Alexander Fleming, who were all material witnesses for this deponent, have departed this life since said action was so dismissed as to this deponent.

That this deponent is not able to, by the testimony of any other parties, *to* prove the facts which he expected to be able to prove by said Kneeland and said Kilbourn & said Fleming. This deponent further says

that no other parties have knowledge of such facts save by hearsay.

This deponent further says that he purchased and paid for
116 one-sixth of said property without any knowledge or information that any person was interested in said purchase besides C. D. Nash and said Charles D. Cooke; *the* he purchased the other undivided one-sixth of said premises of Edwin H. Goodrich after he had read the bill of complaint, and the pleadings in the case of Newcomb Cleveland against the said railroad company, or after he had heard the matters therein stated alleged by said Cleveland.

That said Goodrich, at the time he purchased said interest, had no knowledge or information that said premises were purchased by said Nash for the benefit or in the interest of any person other than said Nash & said Cooke.

E. MARINER.

Subscribed & sworn to before me this 26th day of October, 1872.
EDWARD KURTZ, *Clerk.*

Order relative to reinstating Mariner as a def't.

JANUARY 18, 1872.

The motion heretofore made by the complainants to make E. Mariner a party defendant herein, coming on to be heard, it is ordered by the court that the motion, for the present, be denied, with leave to the complainants at the final hearing to renew the motion, if, in the opinion of the court, he should be made a defendant and bound by the decree, nothing herein shall prevent the complainants from taking proofs during the further progress of the cause affecting the said E. Mariner.

117 JUNE 2, 1873.

On motion of N. S. Murphey, compl't's sol'r, it is ordered that the plea heretofore filed by S. O. Chandler & others to the complainants' bill on file be, & the same is hereby, set down for hearing on the first Monday of July, 1873.

JULY 10, 1873.

This day came the parties, by their counsel, and, by consent, it is ordered by the court that the time for the complainants to take their evidence be extended to the 15th day of August next, and for the defendants to take their evidence until the first Monday of October next.

SEPTEMBER 1, 1873.

On motion of N. S. Murphey, sol. for complainants, it is hereby ordered that this cause be, and the same is hereby, set down for hearing upon the pleadings & proofs herein at the next term of this court, commencing at the city of Milwaukee, in said district, on the first Monday of October, 1873.

OCTOBER 10, 1873.

This day came the parties, by their counsel, and, on application of the defendants, it is ordered by the court that the time to take their testimony be, and hereby is, extended to the fifteenth day of December next, and, by consent, that the complainants have until the first day of January next to take their evidence in reply, and that this cause be
118 set down for hearing at the ensuing January term.

NOVEMBER 10, 1873.

On motion of N. S. Murphey, complainants' solicitor, it is ordered that this cause be, & the same is hereby, set down for hearing upon bill, answer, & proofs taken therein at the term of this court to be held at the court-room in Milwaukee, in said district, on the first Monday of January next.

MARCH 7, 1874.

On motion of N. S. Murphey, sol. for complainants, it is ordered that this cause be, and the same is hereby, set down for hearing on the bill, answer, and proofs taken therein at the term of this court appointed to be held in the city of Milwaukee, in said district, on the 21st day of April, 1874.

MAY 26, 1874.

On motion of N. S. Murphey, compl'ts' sol., ordered that this cause be, and the same is hereby, set down for hearing on the bill, answer, replication, & proofs at the next term of this court, appointed to be held at Oshkosh, in said district, on the first Monday of July, 1874.

SEPTEMBER 10, 1874.

On motion of N. S. Murphey, compl'ts' sol'r, ordered that this cause be, & the same is hereby, set down for hearing on the bill, answer, replication, & proofs at the next term of this court appointed to be held at the city of Milwaukee, in said district, on the first Monday of October, 1874.

119 NOVEMBER 9, 1874.

This day came the complainants, by their counsel, Mr. Murphey, and, on his motion, it is ordered by the court that Francis Bloodgood, the examiner in chancery before whom the testimony in this cause was taken, return the same into court.

NOVEMBER 11, 1874.

This day came the defendants, by their counsel, and moved the court upon affidavit filed for a continuance of this cause, and being argued by the counsel of the parties, on consideration thereof, it is ordered by the court that this cause be, and hereby is, continued.

And it is further ordered that the same be, and hereby is, set down for hearing at the January term, 1875.

MARCH 22, 1875.

On motion of N. S. Murphey, compl'ts' sol'r, ordered that this cause be, and the same is hereby, set down for hearing on the bill, answer, replication, & proofs at the next term of this court, appointed to be held at the city of Milwaukee on the 20th day of April, 1875.

Hearing.

MAY 7, 1875.

This day came the parties, by their counsel—Messrs. Carpenter and Murphey appearing for the complainants, and Messrs. John W. Cary and E. Mariner for the defendants—and the cause came on to be heard upon the pleadings and proofs, and was argued by Mr. Murphey

120 on behalf of the complainants, and, not being concluded, the further hearing was adjourned until to-morrow morning.

MAY 8, 1875.

This day came the parties, by their counsel, and the hearing of this cause was resumed before the Hon. Thomas Drummond, circuit judge, presiding alone, and not being concluded, the further hearing was adjourned until Tuesday morning next.

MAY 11, 1875.

This day came the parties, by their counsel, and the hearing of this cause was resumed before the Hon. Thomas Drummond, circuit judge, and not being concluded, the further hearing was adjourned until to-morrow morning.

MAY 12, 1875.

This day came the parties, by their counsel, and the hearing of this cause was resumed before the Hon. Thomas Drummond, circuit judge, and being further argued by Mr. Carpenter for the complainants and submitted, the court took the same under advisement.

And on said hearing the following testimony was read in evidence:

121 COMPLAINANTS' TESTIMONY.

U. S. circuit court, eastern district of Wisconsin.

LAWRENCE G. GRAHAM ET AL
vs.
THE LA CROSSE & MILWAUKEE R. R. COMPANY ET AL.

Depositions on behalf of complainants taken before Francis Bloodgood, examiner in chancery, Milwaukee, Wis.

Present, Matt. H. Carpenter & N. S. Murphey, counsel for complainants; John W. Cary, counsel for Milwaukee & St. Paul Railway Company; E. Mariner, in pro. per., and counsel for the defendant Ludington.

CHARLES D. NASH, being duly sworn, deposes and says:

122 Q. Mr. Nash, state whether, in the year 1855, or thereabouts, you entered into a contract with the La Crosse and Milwaukee Railroad Company to purchase any real estate of them situated in this city.

A. I did.

Q. Can you give a description of the land or any part of it?

(Obj. to.)

A. I should have to rely upon this deposition for pretty much all the testimony I should give in the matter. The most definite description that I could give would be that it was located near the mouth of the Menomonee River in this city.

Q. Could you give us any idea about the quantity of land, or the number of lots?

A. It would be my impression that it embraces about one block, but I could not give any definite description of the land.

Q. With what officers of the La Crosse and Milwaukee Railroad Company did you negotiate that contract of purchase?

A. I cannot state positively, but my impression is that Byron Kilbourn was one of the parties, but it is some 14 years back, and my memory does not reach very good back.

Q. What relation did Byron Kilbourn sustain to the Milwaukee and La Crosse Railroad Company?

123 A. I am not very certain; I think he was president of the company at the time.

Q. Was the whole negotiation conducted through him, or was it a part conducted through some other officers of the company?

A. I think it was mainly conducted through him, but I cannot state with any positiveness.

Q. State whether it was conducted in part through the intervention of the board of directors.

A. Well, I can't state with any degree of accuracy as to that. I have a very vague impression as to the negotiation. It is some 14 or 15 years since, and it would be idle for me to undertake to state any more definitely. My recollection is, that Byron Kilbourn was the party that I treated with, and that is about as definitely as I can recollect about it.

Q. Do you remember how much you contracted to pay for this land?

A. I think it was $15,000.

A. How was that to be paid?

A. Well, I think in stock in part; I don't know but all in stock. I don't remember positively.

Q. Have you any memorandum or date by which you can ascertain any more definitely about that contract than you have already stated?

A. I have not, without I could refer to my testimony given formerly.

Q. Were you ever examined upon this subject before?

124 A. Yes, sir.

Q. When?

A. About 10 or 11 years ago, as near as I can remember.

Q. Did you ever pay any consideration for those lots?

A. Yes, sir.

Q. Can you tell us what any part of the considerations consisted of?

A. I think it was mainly paid in the stock of the company, if not entirely.

Q. Full-paid stock of the company?

A. Yes, sir.

Q. Where did you obtain that stock with which to make that payment?

A. I could not tell you. I could give an impression, if that is what you want.

Q. I would like if you could give us sometning distinct on the subject, if you can.

A. I can't say that I recollect from what source I got it.

Q. Will you be to the trouble of refreshing your recollection by reference to such records and papers as are within your reach, and tell us definitely what this contract is?

A. I will refresh my mind in the matter.

Q. Have you this original contract?

A. I don't know whether I have or not. I have a file of

125 papers which this may be in and which it may not be in; fourteen or fifteen years is a very long time, and I thought the papers need not be overhauled again. I cannot speak with any positiveness now about it.

COMPL'TS' COUNSEL. We ask that this be adjourned untill Friday or some other day, because it is necessary that the witness should have time to refresh his memory in this matter by the examination of such papers and records as are within his control and reach.

DEF'T' COUNSEL. We object to the adjournment, because the only thing that has been asked for that has not been disclosed is the existence of the writing or the non-existence of it, and we agree that the writing is in existence; the witness cannot be interrogated as to the contents of it, and cannot testify as to the contents of it. We object to any adjournment until the witness has been examined by the counsel on all points that he intend' to examine him upon except such as he states he needs time to refresh in memory upon.

COMPL'TS' COUNSEL. The examination of the witness will be upon the contract referred to and the collateral question growing out of it and connected with it, and unless the counsel has here that contract or a paper admitted to be a copy of it, I will be unable to examine the witness. I have here a paper which purports to be a copy of it, and
126 if the other counsel concede it to be a copy, I will go on with the examination.

The examiner requires, before granting the adjournment, that the counsel ask the witness some questions touching the testimony which he expects from him, and the counsel thereupon proceeds.

Q. Have you in your possession the contract you made with the La Crosse and Milwaukee Railroad Company for the purchase of those lots?

A. I can't say whether I have or not.

Q. Could you state the terms of that contract, and the officers with whom you negotiated it without reference to the contract, and the papers connected with it?

A. I could not do so.

Q. Have you had any opportunity since you were notified to appear here to examine those papers, to ascertain whether you had the contract, or to examine any memorandums connected with it?

A. Not one minute.

Q. Could you give any intelligent account of that transaction without an opportunity to investigate those things?

A. No, I could not.

COMPL'TS' COUNSEL. I renew my application for an adjournment.

DEF'D'TS' COUNSEL. Let me ask you a few questions. Have you
127 been requested to examine any of those papers and to refresh your memory in any respect before you came here?

A. Not of the papers in my possession. My attention was called to the subject by Mr. Murphey this morning in his office, and he did request me to refresh my mind upon the subject.

Q. Have you been requested to examine any of those papers or to bring them here?

A. I have not been requested to examine any papers in my office, or to bring any here, not to my recollection. Perhaps I should modify that by saying that I have not been requested to go to my office and hunt up papers and bring them here. Mr. Murphey did request me to refresh my mind on the subject, but not to look up papers in my office and bring them here.

DEF'TS' COUNSEL. I object to the adjournment.

EXAMINER. The examiner will grant the adjournment, but will give the def'ts' counsel his right to examine the witness now in the nature of a cross-examination. Def'ts' counsel expressing no desire or intention now to examine the wit's.—

Adjourned until 2½ p. m., Monday, Aug. 2, 1869.

128 MONDAY, *Aug. 2nd*, 1869—2½ p. m.

C. D. NASH recalled.

Q. State whether in '55, & if so, what time in the year you made a purchase of any lots or lands from the La Crosse & Milwaukee R. R. Co.

A. Well, about Sept'b'r, '55, I purchased some lots of the La Crosse & Milwaukee R. R. Co.

CARY. Was that purchase in writing?

A. Yes, sir.

Q. Then let us have the writing.

A. What do you want? That I should hand it over to be examined, or read it, or what?

Q. Well, just hand it over, & if you want the original back, a copy of it can be kept.

A. Well, I can produce here what seems to be articles of agreement between Stoddard Judd & myself for the purchase.

Q. It is an agreement by the R. R. Co. & you, signed by Stoddard Judd?

A. Yes, sir

MURPHEY. What is the date of it?

A. The eighth of Sept'b'r, '55.

Q. This is the original contract?

A. Yes, sir.

Q. Did you purchase any other lots than are described in this contract from the La Crosse Company about that time?

129 A. I did.

Q. Can you give us a description of those lots?

CARY. Is it in writing?

MURPHY. Give us the description.

A. Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14, bl'k 155, lots 1 & 4 in bl'k 156, an undivided ½ of bl'k 157, except lot 8, and one-eighth of the bayou adjoining the last mentioned lot, and thence running to the Milwaukee River; the undivided ⅓ of lots 8, 9, 16, 17, 10, 12, 13, 14, & the east half of 15, bl'k 158.

Q. Is that all?

A. I think so.

Q. What wards are these lots in?

A. I do not see that this paper tells what wards they are in.

Q. If you can tell us what wards they are in, just do so, if you please.

A. I cannot tell you.

Q. Did you know where those lots were at the time you purchased them?

A. I probably did, sir.

Q. Can you tell us now which ward of the city of Milwaukee they are in?

A. I cannot tell you. I have no recollection of any locallity now, except only down near the Menomonee Marsh.

Q. You do not know that that is in the fourth ward?

130 A. My recollection of it is, it was in the fifth ward.

Q. Well, a part of it is in the fifth ward & a part in the fourth.

A. Well, it was down near the Menomonee, about where some of the railroad buildings stand?

Q. State what the consideration was for all those lots.

CARY. I object to that on the ground that both contracts are in writing, & I demand their production & object to any other porof.

Q. Have you got the contract here?

A. I don't think I have any contract for those, except those in the fifth ward.

Q. Have you the proposition in writing that you made to the La Crosse Company to purchase those other lots, aside from those described the contract in writing? (The contract produced.)

A. Yes; I think I have.

MURPHEY. I offer in evidence the first contract for the purchase of the lots in the 5th ward.

(Marked Ex. No. 1.)

NASH. I will modify what I said as to the contract or the proposition. I have a proposition here that seems to be drawn in my own handwriting, but I don't know whether it was ever submitted. I found it in my old papers. I may have submitted a different proposition. It
131 seems that I did purchase this property at two different purchases; one for $15,000 & one for $10,000. And here is a proposition written and signed by mysel, but I cannot say whether it was ever submitted. The proposition was to purchase the whole property.

Q. Does that include all the lots?

A. Yes, sir; it includes both purchases.

MURPHEY. We offer that proposition in evidence.

(Ob. to.)

(Marked Ex. No. 2.)

Q. Have you been able to find any other proposition for the purchase of those lots that you can say was submitted to the R. R. Co.?

A. No, sir.

Q. Now, Mr. Nash, can you tell us how those lots were paid for?

A. Lots 9, 10 & 11 in bl'k 3, & lots 1, 2, & 3, bl'k 47, in the 5th ward, were paid for in La Crosse & Milwaukee R. R. stock.

Q. How much?

A. $15,000 of stock at par—full-paid shares of the capital stock of the La Crosse & Milwaukee R. R.

Q. How was the balance paid for?

A. Well, I can't state positively, but from such data as I have to refresh my memory from I should say that the other was paid for in farm-mortgages of the La Crosse & Milw. R. R. Co.

132 Q. In amount how much?

A. $10,000, I think.

Q. Did you send this, or some other proposition, in writing to the board of directors, or executive committee of the La Cross Company?

A. I cannot say whether it was to the executive committee, or to the president, or what particular functionary.

Q. Now, did you receive any notification of its acceptance from any officer of the company?

A. Yes, sir.

Q. Can you tell who?

A. Well, I cannot state definitely about that.

Q Do you remember whether it was the chairman of the executive committee of the board?

A. I can't say. I don't remember.

Q. Did you have any interest, yourself, Mr. Nash, in that purchase?

A. No, sir. I did not take any interest. I had, I think, an expectation of an interest in it, if I might elect to take it.

Q. You finally elected not to take it, did you?
A. Yes, sir.
Q. For whose benefit did you make that purchase?
A. Well, I think the parties directly interested were James Ludington & Moses Kneeland.
Q. Who furnished you the means to make the purchase?
133 A. It would appear from reference to my papers that Moses Kneeland did.
Q. State whether Moses Kneeland was at that time a director in the company?
A. Well, I cannot say positively, but I think he was.
Q. Was James Ludington, at that time, a director in the company?
A. I do not remember, & have no impression about it, definitely.
Q. Do you not remember upon reflection that they were, & were both members of the executive committee of the board?
(Obj. to as leading & incompetent.)
A. I do not remember.
Q. Do you know whose means or property it was with which you effected this purchase?
A. Moses Kneeland furnished the means for the purchase of the six lots, and I don't know that I can state positively, but I think he furnished the means for the purchase of the whole of it. I do not seem to be able to find anything among my papers to make that point positive.
Q. You mean Mr. Kneeland delivered the means to you to be applied by you to this purchase; was he the sole owner of these means, is what I want to get at, or whether they were furnished in part by him-
134 self & in part by Mr. Ludington.
A. I cannot state how that may have been.
Q. You don't know how that is?
A. I do not know. It is merely an opinion.
Q. Did James Ludington furnish any of these means, at least deliver them to you, for the purchase of any of the lots?
A. I should think not.
Q. Were you acquainted with the value of that property at that time?
A. Not very much. I had a general knowledge of it.
Q. What did you do with the contract that you made with them for the purchase of those lots?
A. I assigned it to Moses Kneeland.
Q. How long after the contract was made did you make this assignment?
A. Well, probably within 2 or 3 months.
Q. What consideration was paid by Kneeland to you for that assignment?
A. No consideration.
Q. Why did you make the assignment?
(Obj. to as leading.)
A. Well, not preferring to retain any interest in the property, & it being optional with me, if I did not choose to retain any of it, to assign to him & be reimbursed for any disbursements for it is the reason why I made the assignment.
135 Q. State whether the form of this assignment was the ordinary form of assignment, or whether, before that assignment was made, the company conveyed to you & you conveyed to Kneeland, by deed of conveyance.

(Obj. to on the ground that the transaction must have been in writing, & would show for itself.)

A. It would seem I executed to Moses Kneeland a deed of conveyance.

Q. State whether Moses Kneeland gave you a bond of indemnity against loss resulting from your name not appearing in this purchase.

A. He did.

Q. Have you that bond in court?

A. I have.

Q. Will you produce it?

A. Here it is.

(Marked Ex. No. 3.)

Q. What was the value of the paid-up stock such as was paid on that $15,000 purchase at that time?

A. Well, I cannot tell you.

Q. What was its market value, I mean; what was it worth?

A. It would be simply an opinion that I could express about it. I should have to give an opinion.

136 Q. Well, that is all anybody could do.

A. I think the stock was worth about par at that time, but I may be very wide of the mark.

Q. What were those farm mortgages worth at that time?

A. Well, farm mortgages were generally worth about par at that time; I had piles of them, I know, that I have now got, that I could have taken about par for at that time.

Q. That's all.

Adjourned until 9 a. m. Aug. 3rd, '69.

Cross-examination:

Q. Previous to this purchase by you, had you any conversation with C. D. Cook about making the purchase of this property?

A. Not to my recollection.

Q. Did you within a short time subsequent to it?

A. Well, I don't remember; it is not improbable at all, but I have not the slightest recollection of it.

Q. Where is Mr. Cook now?

A. In Heaven, I hope.

Q. What time did he die?

A. In Oct., '57.

Q. What was Cook's business in '55?

A. Well, I think he was building a portion of the La Crosse road, but I cannot state that as positive. I think he was also engaged in building the Prairie du Chien road. I am quite sure he was at

137 work on that road, and I think on both.

Q. Where did Mr. Cook have his office at that time?

A. Well, sir, I cannot speak positively.

Q. What part of the La Crosse road did he have a contract on?

A. I don't know on what portion of the road, further than this: I went up with him, I know, on to the work where he was at work at that time, & after came here in '54, & I think about '55. I remember of getting into his buggy & driving up to the work with him, 2 or 3 miles out of the city.

Q. That was the Green Bay road?

A. Yes, sir; he was doing some work up near Beaver Dam about that time.

Q. Then was it the road from Rolling Prairie to Beaver Dam?

A. Probably it was.

Q. Did Mr. Cook have an office in Kneeland's block after he commenced building the road from Madison to Prairie du Chien?

A. I cannot speak positively as to whether the change down to the corner of E. Water & Huron streets had been made at that time or not.

Q. Was he once an officer of your bank?

A. He was once a director & vice-president.

138 Q. How was the first payment made by you to the La Crosse Company for this property?

A. Well, I cannot answer that question. I do not remember what property or securities were paid.

Q. And the other lots were not paid for until after the suit with Walker was compromised?

A. The six of them were paid for at the time the contract was entered into, as I understand it.

Q. The consideration for the six lots was not paid at the time that the consideration for the other lots was, was it?

A. Well, from glancing at those papers yesterday, I should think the other lots probably were paid for at the time of the purchase in Sept'b'r.

Q. How were the' paid for?

A. I cannot tell you. I think I did not find yesterday any positive evidence how those lots were paid for. I submitted a paper in my own handwriting & signed by myself as a proposition, but I do not know whether this proposition was ever submitted. I cannot be positive just how the payments were made for that property. I think it is a pretty strong inference.

Q. Have you any recollection about it?

139 A. I have no recollection about it, except simply what I get from looking at those papers. Indeed I had forgotten all about it. I think I did not find yesterday anything to show how I paid for those lots.

Q. Is it not possible that Mr. Cook first suggested to you the idea of purchasing this property?

A. It is possible, sir.

Q. Is it not possible that you paid for this property with securities which belonged to Mr. Cook?

A. It is possible.

Q. Who else besides yourself & Moses Kneeland do you recollect as being a party who might have any interest in this purchase?

A. James Ludington.

Q. Why do you recollect him?

A. Well, I think he figured in the matter considerably.

Q. Did you ever talk with him about it?

A. Probably I did; but I don't remember that I did.

Q. Did Mr. Cook ever take an interest in that property?

A. I cannot tell.

Q. Do you remember anything about hearing James Ludington's name mentioned in connection with this purchase until a short time before the suit between the Co. & Walker was compromised?

140 A. I could not state upon that point anything definite at all.

Q. Now, when this transaction was first made, were any other persons talked of as being likely to take an interest—I mean, at the time that the contract was made & not afterwards, not when you transferred the title to the property, but at the time you made this proposition—were any persons mentioned between you & whoever you talked with there other than Cook, Kneeland, & yourself?

A. I do not remember any others than Kneeland & Ludington. I do not remember that Mr. Cook was.

Q. Do you remember of Mr. Ludington having been mentioned at the time this purchase was made or afterwards when you made the transfer?

A. Well, I am very confident that his name had been mentioned before t e transfer.

Q. Were the securities, or the money or whatever you did pay, paid directly upon the execution of the deed?

A. I cannot state.

Q. Can you state whether they were paid at all as a matter of fact?

A. Yes, sir.

Q. Where were they paid?

A. I cannot tell where.

Q. To whom were they delivered?

141 A. I can't tell.

Q. Did you negotiate with Dr. Judd touching this matter at all?

A. I do not remember that I did.

Q. Did you negotiate with anybody on the part of the company further than to deliver to them your written proposition?

A. Well, I don't think I did; but I cannot be positive.

Q. Did Mr. Cook keep his securities at that time at your bank?

A. He probably did. If he did not at that time he did subsequently, but I cannot fix the date positively enough to know whether the Bank of Milwaukee was in existence at that time. I think the Bank of Milwaukee went into existence in the year '56, but it may have been in '55.

Q. Did you ever have an office with Cook in the bank building on the corner of Huron & E. Water streets?

A. No, sir.

Q. Did the Bank of Milwaukee commence business there?

A. No, sir; it commenced business over the river in the Austin block.

Q. Can you find out by reference to the books of the bank when

142 it organized & when you went down into that building?

A. Yes, sir.

Q. Please do so.

(Witness goes out and returns.)

Q. Did you find your books?

A. Yes, sir.

Q. Now, what was the date?

A. The bank was organized in Jan'r, '55, & we took possession of the bank building on the corner of E. Water & Huron streets in May, '55.

Q. Did Mr. Cook go there about that time?

A. He did.

Q. Now, if it should turn out as a matter of fact that you paid the payment that was paid at the time entirely with the securities of Mr. Cook, would it startle you or change your recollection as to this transaction at all?

(Obj. to as incompetent.)

A. Well, it would lead me to suppose that Mr. Cook had an interest in it; I don't know of any other change it would make.

Q. From whom did you get any of the securities that you paid to the company, except from Mr. Cook?

A. Well, my impression is now that I have seen something among this bundle of papers showing that I got those mainly from Moses Kneeland. I think I have made some such statement here.

143 Q. At the time the first property was conveyed to you?
A. Which was conveyed first?
Q. The other lots, except the six.
A. I have no recollection as to what source I got those securities from—that is, the $10,000.
Q. If you had borrowed that from Cook, would you have been likely to have remembered it?
A. Well, I think I should.
Q. Do you remember whether Cook was in the city at the time or not, on the 8 of Sept'b'r?
A. No; I do not.
Q. Is it probable that you obtained securities from Cook unless he had an interest in the purchase?
A. It don't seem probable at all.
Q. Have you ever read over your testimony that you gave at a former time on this subject?
A. Yes, sir.
Q. You mentioned Cook there as having talked with you touching the matter, did you not?
A. I cannot say whether I did or not. I could have remembered more correctly then, because that was about 3 years subsequent to the transaction, & this is about 14 or 15.
Q. If it should turn out so you could be satisfied it was a fact that you mentioned Cook as having talked with you in regard
144 to the purchase, & that you actually paid over Mr. Cook's securities at the time, would it satisfy you that Mr. Cook had an interest in the purchase, great or small?
A. It would be a very strong inference that he did. At the same time he was a man that would loan anything that he had to a friend to accommodate him.
Q. When Mr. Cook was gone, would you be likely to take his securities & pay them over to the R. R. co. on this purchase unless Mr. Cook had an interest more or less in the purchase?
A. Certainly not.
Q. Can you tell, from any memorandum that you have got, whether Cook was in town at that time or not?
A. Well, I don't think I could. Of course, it is a fact I could ascertain by finding his check-book & papers at that time. I cannot tell by any papers that I have got & examined.
MURPHEY. Have you any memoranda in your possession showing who paid you any portion of the proceeds with which you paid for those lots immediately at or about the time of the purchase?
A. I have.
Q. Will you produce it?
A. Yes, sir.
Q. In whose handwriting is it?
A. Well, I can't answer that.
Q. Is it in your handwriting?
145 A. No, sir.
Q. Whose name is signed to it?
A. My own.
Q. By yourself?
A. Yes, sir.
Q. What is the date of the paper?
A. 24th of Septb'r, '55.

Q. Have you any doubt but that that paper states the facts, so far as it states facts relative to the transaction?

A. No, sir.

MURPHEY. We offer that paper in evidence as Ex. No. 4.

(Obj. to.)

CARY. Look at the word "bonds."

A. I think that word "bonds" should have been "stock."

MURPHEY. Whose memorandum in pencil is that?

A. I don't know.

Q. Is that in Moses Kneeland's handwriting?

A. I think it is, but I don't know. It looks a little like it. It is not probable that anybody else would have made that. It could hardly be anybody else.

Q. If Mr. Ludington or Mr. Kneeland had wished to borrow $10,000 in stock or farm mortgages for their individual use, would they not have been very likely to have called upon Mr. Cook to have loaned

146 it to them as quick as anybody else?

(Obj. to.)

A. It is rather probable they would.

Q. Were not the relations between those three men very cordial & intimate?

A. I think rather so, as between Kneeland & Cook, but as between Cook & Ludington I have no impression.

Q. (That's all.)

JOHN H. TWEEDY, being sworn, testified as follows:

Q. You reside in Milwaukee?

A. Yes, sir.

Q. How long have you resided here?

A. Over 32 years.

Q. What is your profession?

A. It has been lawyer.

Q. Have you dealt any in real estate in the past 20 years in this city?

A. Yes, sir; considerably.

Q. Were you acquainted with the value of real estate in the 4th & 5th wards of Milwaukee, in '55?

A. Yes, sir; pretty well acquainted, in the 5th ward especially.

Q. Did you own property in those wards at that time?

A. Yes, sir; near the line of the 4th & in the 5th.

147 Q. What was the value of lots 9, 10 & 11 in block 3, 5th ward, city of Milwaukee, in '55?

(Obj. to as incompetent & immaterial under the issues involved in this case.)

A. Well, at the rates property then sold in the neighborhood, I should judge about 3,000 or 4,000 dollars a lot on the usual terms, ¼ down—four payments.

Q. What was the value of lots one, two & three in bl'k 47?

A. About $1,500 apiece at that time.

Q. Now, in the 4th ward, at that same time, what were lots 1 & 4, bl'k 156, worth?

(Same obj. to each of the questions.)

A. Not far from $1,000 apiece; less than a thousand, probably. They were under water, & I could not tell much about it. I had never been on them, & don't know the depth of the filling, & there was no street immediately by them, that is, close to them, but there was near them; I never paid particular attention to them.

Q. What were lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14 in bl'k 155 worth?

A. $1,500 apiece; about that, according as property was then estimated.

Q. What was $\frac{1}{8}$ of bl'k 157, except lot 8, worth?

148 A. Not far from $1,500; I mean $\frac{1}{8}$ of the block with that lot out. That fraction is worth $1,500, or not far from that, as property was then estimated. That was rather out of the city, & I only compare it with the general value of property around it, as estimated. It is a mere proximate guess. Perhaps you cannot realize that as fully as if you had lived here. The center of that bayou was under water, & had been for 20 years, but the margin of the river all round was so that nobody could get all over it, and it was talked of a good deal; 155 & 158 was a matter of traffic a good many years. I bought a part of 158 myself, & held it 15 or 18 years, & I owned right south of this tract, with several others, 15 or 20 acres near the river, which was docked, & certain portions I had occasion to note & compare; but that was under water & I don't know how deep it was.

Q. What was the value at that time of $\frac{1}{8}$ of the bayou adjoining bl'k 157?

A. There are other men can tell you better about that than myself, for they dealt in it & I did not. I could have told you some years ago about what they held it at in trade, but I cannot tell you now. Daniel Wells & others used to deal in it, but I cannot remember what

149 the prices were now.

Q. As I understand, the difference between the bayou & the land immediately adjoining these was that the water stood on these at this time?

A. No, sir; not that bayou. Water stood on the property adjoining it. There was a bayou in fact & a bayou by legal appellation in court. The owners of 157 claimed this that is not platted to belong to them by legal appellation, & it was in court a number of years. But as a matter of fact the bayou was two or 3 times as large as that at this time, but this was not platted.

I do not know where the meandering line of the river was, but this bayou was a portion that had not been platted, but the bayou covered bl'ks 156 & 157 entirely, & a part of 47 & 48.

Q. You could not fix a value upon that?

A. No; I give the value according to the then rates of sale in the neighborhood.

Q. Could you, with reference to that, fix a value upon this?

A. No, sir; because I cannot remember. When I was examined before, perhaps I had some impression, because I had heard of a good many sales & had some interest in knowing prices, but I have

150 forgotten all about it now.

Q. What was the value of $\frac{1}{3}$ of lots 8, 9, & 10, and all of lots 12, 13 & 14, bl'k 158?

A. I owned $\frac{1}{3}$ of those 4 lots, 8, 9, 16, & 17; I owned $\frac{1}{3}$, & the La Crosse R. R. Co. $\frac{1}{3}$.

Q. Give us the value of $\frac{1}{3}$ of lots 8, 9, & 10.

A. I ought to have consulted my books, where I have valuations made that very date. I made valuations of a good deal of property there different years & kept books. Property changes very rapidly in a year sometimes, and back so far I cannot remember unassisted.

Q. Where are your books?

A. At my house.

Q. Can you send a boy to obtain them for you?

A. No, sir; nobody could find them. Those books contain my estimate of what I thought property was worth, according to the then rates of property sales. I go just by what property brings in market, or is likely to bring. Sometimes it will bring a very high price, and sometimes a very low price.

Q. Would your memoranda cover all this property in question so you could tell what your estimate of its value was then?

A. Yes, sir; I know what I estimated property all round at that time, or should know, & know the comparative prices.

(Witness goes for his books.)

151 Q. Mr. Tweedy, I wish now for the value of those lots.

A. Well, I find that in '55 that property changed very much during the year, & therefore it is pretty hard to say. I should say some property changed from 30 to 40 per cent. in that year in the market value.

Q. I want to know how it was in Sept'b'r, '55.

A. I have a memorandum taken in that year, but I can't state what time in the year it was taken; therefore I cannot tell what particular time in the year. Some time in '55 I estimated those 4 lots at $9,000—8, 9, 16 & 17.

Q. $9,000 for the whole?

A. Yes, but I can't tell what time in the year.

Q. The value of $\frac{1}{3}$ of those lots would be $\frac{1}{3}$ of that?

A. Yes, sir; that block did not vary much, except 2 lots on the street which you did not ask about.

Q. Now give me the value of $\frac{1}{3}$ of lot 10?

A. The other lots named are about the same value.

Q. 10, 12, 13 & 14 are about the same value?

A. Yes, sir.

Q. The east half of 15 in the same block?

A. About the same value. There might have been from 10 to 15 per cent. difference in some of them.

152 Q. In your estimate, as given, of the value of those lots, state whether it was based upon the condition of the lots, as they were at that time.

A. As they were at that time, & according to the valuation of property sold near by, as near as could be, according to my best judgment at that time.

Q. Have you been able, from an inspection of your memoranda, to mention anything more definite about the valuation of that bayou?

A. No, sir. I never had any occasion, & I did not know really the exact area of it until the depot property was bought, although I was in the habit of once in a while hearing parties talk about it. After the depot grounds were bought I went over it with 2 or 3 parties.

Q. Were you ever examined in a case pending in the U. S. distr' court, where Newcomb Cleveland was plaintiff & the La Crosse Road & others were defendants, in '58.

A. I was examined in a suit between those parties, but I don't know what the date of the examination was.

Q. Do you remember what you testified in that examination in regard to the value of this bayou?

A. No, sir. I can't tell, except I just looked at that, but I can-

153 not tell otherwise. I might at that time have made a cast—examined the bayou & made a cast by comparing that with the lots around, & made an estimate. I think very likely I did; we had a large

map before us. But there are men that know ten times as much about that as I do.

Q. Will you examine & tell me if that is your signature?

A. Yes, sir.

Q. Can you tell whether that is the testimony as you gave it at that time?

A. I presume it is. I presume that it was all read over to me before I signed it. That was the habit, & I think that was the case.

Q. Can you refresh your memory by examining that in regard to the valuation of that bayou property at that time?

A. I have no recollection on the subject; but I have no doubt but that is my testimony, though. Probably I made a cast there. That is an irregular piece of ground, & it would take some time to make a cast.

Q. State whether your estimate of those lots which you have given was based upon the lots in their then condition & value in '55.

154 A. I intended to, but there is always a chance for criticism in value—I mean market value—that fluctuated immensely.

Q. Were you acquainted with the condition of those lots from the time you make this estimate of their value until the 2nd of June, 1860.

A. Yes, sir; I was in the habit of seeing them & knowing about them all the time.

Q. State whether during that interim of time any improvements, & if so, what, were made upon those lots?

A. I cannot tell when the improvements were made. Those on 155, for instance, or on 3; there were docks build, but I don't know when. It is so far back I cannot tell the year, without going back to compare with something else.

Q. Do you know who made those improvements?

A. I understood Moses Kneeland & others.

Q. Ludington & some others?

A. Kneeland was the active man. I know that he was docking & dredging in front of 155.

Q. What, in your judgment, is the value of those lots that you have estimated in 155 to-day?

(Obj. to.)

A. Well, sir, I don't know. I have not heard of any sales in that region, & I have not been in the way to make inquiries or hear

155 anything about the prices of lots in that neighborhood.

Q. You have a general knowledge, have you not, of the value of real estate in those wards do-day?

A. Yes, a general knowledge, but not a particular knowledge; very general.

Q. What, in your judgment, are the values of lots 9, 10, & 11, in bl'k 3, to-day?

A. I hav'n't heard of any sales there for a year or two to compare with, but you can prove that by men who do know.

Q. In that immediate neighborhood?

A. Yes, sir; those very lots.

Q. Give us your judgment.

A. I cannot tell. I do not give my opinion of what property is worth, but what I think by the sales made in that neighborhood.

Q. Can you tell what you thought it was 2 or 3 years ago?

A. I cannot remember. I remember of hearing of sales to lumbermen there within 2 or 3 years, & I could put myself in the way of finding it out. Houghton, I think, bought some. Mr. Judd can tell you.

Q. Now, passing the question of time, can you then fix it within the past 2 or 3 years?

A. I understand that property has sold there for $200.00 to $250.00 a foot there, but I cannot tell when it was.

(Obj. to.)

156 Q. *Have* does that property compare in value with this?

A. It was right along there.

Q. Was it about the same value?

A. I presume if any sold for $250 it was the corner, which is worth more. 6 & 7, I presume, is what I heard sold for $250, & this at that time, perhaps, would be worth $50 less.

Q. What is the size of 9, 10, & 11?

A. Well, that I am not sure of. They other lots opposite, I believe, are 50 wide in some places. That would make these water lots about 40 feet. Lot 1 is less than a full lot.

Q. Can you estimate the balance in the same way?

A. Yes. Those I spoke of selling so high are on the river; 1, 2 & 3, in 47, are on the other side of the street, & the R. R. occupies them.

Q. What is their value?

A. I don't know what lots below on the street have sold for, and that is true of all the balance of those lots.

A. Yes, sir; but it has not been in my line to make inquiry about it.

Q. That's all.

Cross-examination:

Q. In all your testimony in regard to the value of these lands, I understand you to state that you are only giving what you under-
157 stand to be the market value at that time, & not the value of the lands—the actual value—for any use or purpose they could be put to?

A. I made my estimates upon what I supposed were the market value.

Q. At the time of those, were the lots in bl'k 3 docked or not?

A. I don't know how much of bl'k 3 was docked then; I don't recollect; I know 155 was not,

Q. Were the lots in bl'k 3 filled at that time?

A. I don't know how much were filled. They were at various stages of filling.

Q. Do you know whether they were under water or above water at that time?

A. They were originally a good deal under water, but at this time I don't remember.

Q. How were the lots in bl'k 47 at that time?

A. Under water.

Q. Had they been filled?

A. No, sir.

Q. Do you know the depth of filling that was required there?

A. At that time they filled the sidewalk between 10 & 11 feet. I know I was there when they sounded it—the sidewalk & right in front.

Q. Do you know how much of the lots had been filled since then—to what depth?

A. Well, I presume they had been filled—but I don't know pre-
158 cisely; the streets had been raised 3 or 4 feet more, & the lots, I should think, were about 4 feet below the street, as it now is. I should think those lots had been filled about 10 feet.

Q. Were they at that time covered with water?

A. Yes, sir.

Q. Block 155, you say, was not docked?
A. No, sir; it was not docked, I think.
Q. Was not under water or above?
A. Partly under water; there was an old road right through there that was travelled for years, & in low water a part of the lots were a little above.
Q. How was it with bl'k 158?
A. That had been docked, & more or less filled.
Q. Was any portion of that under water at the time?
A. Yes; near the street.
Q. Had it been docked the whole length?
A. Yes; it was all docked & the filling partly done, that is the dredging, but it did not fill the lots out fully to the edge & some of the lots & a part of the street was under water.
Q. Was any part of that property at that time valuable for use?
A. Yes; 158 could have been used, more or less, the whole of it. It was in use, part of it.
Q. Was any of the rest of it in use or could it have been used?
A. 158 could have been used without being improved.
159 Q. Was all the rest of it under water?
A. 47 might have been used some by building over the water, as they did do; 156 & 157 & the bayou inside of the street could not have been used much without filling; the most of it could not be used without filling. But there was some on Water street that could have been used.
Q. Was there at that time any demand for that kind of property for use?
A. There was some demand for 158 where the lots were improved.
Q. That demand was simply, was it not, for use & not for trade?
A. Yes; you mean rent it in the then state of it. Yes, there were cases where the parties would pay for the improvements themselves & give a man something for it; give a man a ten year lease & he might dock it & fill it himself. I know some of them did that.
Q. What had 158 been used for prior to that time?
A. Lumbering, & there was a mill on part of it called the "Black Warrior."
Q. Was the mill built at that time in 1'55?
A. I don't know precisely when it was built. I think it was about that time.
Q. Was bl'k 158 used for lumber prior to 1855?
A. I don't know that it was; I can't be precise about that.
160 Q. Or was it during that year?
A. I cannot tell without referring to my minutes; it was about that time; but I cannot tell the precise time without referring to papers. We made a lease about that time.
Q. Who to?
A. Statts.
Q. How much?
A. Eldred & myself made a lease of $\frac{2}{3}$ of 8 & 9 in 1858.
Q. Do you know what rent you got for that?
A. I don't think I can tell without referring to books.
Q. What year was that lease made in?
A. I can't tell you.
Q. Wasn't it in 1856?
A. It may have been.

Q. Didn't that property—the greater part of it—remain wholly unimproved & under water up to the time that the R. R. Co. located their grounds there in '64?

A. Well, that is very general; 158 was docked & filled to a good degree but was not in perfect order, but was in shipyards, &c.

Q. 158 had been used for what?

A. 158 had been used more or less during the whole time for lumber & this mill; 2 or 3 lumber yards & a mill, & I don't know but some coal.

161 Q. The rest of it, did that remain unimproved & under water?

A. I cannot say as to bl'k 3 on the river.

Q. Well, except bl'k 3?

A. I think there was some improvements on 47, but I am not sure; I think they had some cheap buildings up there on piles, but no other improvements.

Q. Now, from 1855 up to 1864, take all of that property except bl'k 3, did it pay the taxes on it, take it altogether?

(Obj. to as incompetent.)

A. No, sir.

Q. How much would you say it fell short; what proportion?

A. I can't tell.

Q. Would it a good ways below pay the taxes, in your judgment, with the total receipts of that property?

A. The special taxes on some of it might be very heavy.

Q. Well, take this whole property, without excepting any, was the whole rental of it sufficient from 1855 up to the time when the R. R. Co. took possession of it to pay the general tax, & city tax, & ward, county, & school taxes, without regard to special improvements, in your judgment, for those 9 years?

A. I should guess not; of course I don't know all about it; I don't know what the parties got for the property.

162 Q. Can you estimate anything about the amount of improvements put on to this property from 1855 to 1864?

(Obj. to as incompetent & irrelevant.)

A. I could not say. I have some idea before 1855, because we docked 1,000 feet of property there. I suppose that we expended from $500 to $700 a lot on 155.

Q. You owned property south of that?

A. Yes, sir. Mitchell & myself & others owned considerable property right south of that, and docked and filled up several lots, & rented part of it for ship-yards & for lumber.

Q. You have been asked in regard to the present value of that property. Are these extensive improvements which have been put on to it in the last 4 or 5 years?

A. Yes, sir.

Q. Have you any idea of the amount & cost of them?

A. No; I could not tell within a very large sum, perhaps; I suppose there had been on those inside lots filling to the amount of a thousand to fifteen hundred dollars a lot, counting gravelling, &c., & then there has been docking on the water lots & platforms. I presume there has been $2,000 on the dredging & improvements put on, besides the buildings. But then I could not tell within 30 or 40 per cent. with-

163 out making casts. But I have seen the improvements & know these have been valuable filling—docking & platforms, besides the filling.

Q. Now put your value upon lots 1 & 4, bl'k 156; do you estimate those lots as full lots?

A. No; one is a triangular lot, I think, and has two streets, but I always took that into consideration.

Q. How large are the lots?

A. I don't know; I consider the inequality of the lots compensated by the two streets; I estimate the property under water, because I have sold a great deal of it myself under water, & I go by what people are willing to pay—not for what I could make out of it by improving it myself.

Q. Take those lots there, is it your judgment that those lots have cost full as much to fill & improve as they are worth to-day or would be worth if it were not for the R. R. Co. being there & occupying them, the most of it, or all of it?

(Object' to as incompetent.)

A. If I should take the whole property in a lump, I should make one answer; but I could pick out property there that paid to occupy, & paid well; but a good deal of the inside property I think would cost more than it was worth.

Q. That property that don't come to the river, is it worth what it cost?

A. No, sir; I think not. I think it has cost more than it is worth now for ordinary use.

164 Q. Well, if those lots on the river now were owned by individuals, could they be rented so as to pay six per cent. of the total cost of the improvements?

(Obj. to as incompetent.)

A. That is pretty hard to say, because the improvements are a good deal more extensive than would be necessary for the lumber or coal business. They have cost twice what I should have put upon the property for common use.

Q. Were there any purchasers, except in the way of trade, who would purchase for the purpose of improving there, at the prices you have named, or was that a sort of trade-price for that kind of property?

A. O, there were sales of similar property about town, but a good deal of it was for speculation.

Q. Well, were such sales generally for speculation in that vicinity?

A. They were generally for speculation, but sometimes for improvements.

Q. Up to 1855, had any one, except the old man Shepardson, improved their property down there in that section—I mean this kind of property?

A. I don't think there was any warehouses except Shepardson's in that vicinity, south of the river. But the whole of that river up to the angle was docked by the city authorities before.

165 Q. Do you recollect whether that was docked under compulsion, through the city?

A. I don't know how that was.

Q. Do you know whether the tax certificates were outstanding for that docking?

A. They were not on the lots that we bought. I bought an interest in 4 lots, & they were clear. I don't know how it was as to others.

Q. Can you specify the sales that were made from which you fix your prices on those lots?

A. Well, we did not make sales right in these.

Q. Well, those that you fixed your prices from?

A. As I remarked, before I went away I was in the habit of putting

down from time to time the value of that property, with reference to sales & current prices, but we had not sold right in that spot. We did not want to sell. We bought. We sold some inside lots in 1856. In Dec'r, '56, & the spring of 1857, property went up the highest. In Dec'b'r, '56, we sold lots on Hanover street for $3,000 apiece.

Q. That was a year & a half after this?

A. Yes; I paid $2,000 for a water lot, without anything on it, right above that, in '57, in order to get control.

Q. Did you buy in 1855?

A. No.

Q. You were interested in this property, but were holding it on speculation?

166 A. Yes, sir.

Q. And you were interested to have a good price there?

A. Yes; but we spent $30,000 for improvements there in 1856. We filled 30 lots & docked a thousand feet.

Q. Can you specify the sale of any river lot on the Menomonee River up to 1855, or prior to that, for $1,000?

A. I know of lots sold for higher than that before 1855. This very property was sold to the R. R. at $1,500 a lot.

Q. What R. R.?

A. The La Crosse R. R. Holton & Flanders, they bought those lots together, & Holton sold his third to the R. R. for $1,500 a lot.

Q. How did he get his pay?

A. I don't know. Holton sold for either $1,500 or $2,000. I don't know how he got his pay.

Q. What year was that?

A. I think in the summer or fall of '53, when they located the depot. I presume they took stock; I don't know.

Q. That was under the excitement of having a depot there, was it?

A. That was sold for depot ground.

Q. Was there, in fact, any depot there until '64?

A. Well, there was no depot built until '64.

Q. Commencing in '64, the whole of the railroads have been concentrated there, have they not, that come into Milwaukee?

167 A. Yes; nearly all.

Q. And that made all that great change as to the value of the property & in the sale of property?

A. I should presume it has. But since that, I have had no interest in following it up. All I know is by general report. We sold all we had.

Q. That's all.

Redirect ex.:

Q. What was the relative value in general of those lots in '55, where they were sold in, & in '57?

A. From '55 to '57 property doubled in that region, as a general thing.

Q. Your idea would be that between '55 & '57 the prices you have given for those lots were probably doubled.

A. Yes, sir; on the average; that is according to our sales in the neighborhood, & our price list. I find lots that I marked for $1,100 or $1,200 that were sold for $3,000. But in the fall it was higher than in the spring.

Q. But you think some of it did not double?

A. I only spoke of the average. This is not always true of lots on

the river. I don't think that lots on 158 ever doubled at all, because they had been improved & put to some use.

Q. You spoke of extensive improvements having been put upon
168 those lots after this sale. I wish to know now what proportion of those improvements, of which you have given a rough estimate, were put on these prior to June, '60.

A. Well, sir, but a small proportion.

Q. When you spoke about some of those lots having cost more, or the improvements on them, than they were worth, what did you mean by that?

A. I meant that those inside lots under water 8 or 10 feet, as they were, for a man to own them, he would lose money to improve them as they are improved; that is based upon my experience.

Q. Is that based upon the assumption that there was no R. R. depot there?

A. No; to put to any ordinary use. I have filled lots in the same position in that ward, & it cost so much to do it you cannot get back your money. That is, you cannot sell them or rent them for enough to pay the interest and the general & special taxes. I have spent $1,500 to $2,000 a lot in some instances, & I could not rent them for enough to pay the interest.

Q. Well, if you paid $2,000 & it sold for $5,000, it would pay your interest?

A. Yes, sir; but those inside lots would not have sold for that; I mean those inside lots, & I don't mean those on Water street; I mean those unapproachable by street; I mean those back from any street & under water. But those on Water street would pay.

169 CARY. You mean those on Reed str.?

A. Yes, that was good property, and those on the river were good property. In '55, when they dealt in those things indiscriminately, they didn't make proper discrimination. We sold lots for very much more than they were worth. Mr. Whaling bought 4 lots of us at $1,000 apiece, & he could not afford to pay $200 apiece. I filled one and paved the streets, & made gutters, & sold it for $2,000, & lost my money on that; and if I had not sold it I would have lost more; yet there are lots on Reed street that a man would make money in occupying.

Q. Now, in your judgment, those lots I have been interrogating you about, have paid generally for the improvements that were put upon them. Are they not to-day well worth all they have cost in improvements?

A. They are to anybody that could afford to put them to use for their own use. But I should not have spent ⅓ as much as they did to get my money back. I should just have made a lumber or coal yard as fast as a man came along & wanted them, & left the inside lots under water until they were required.

Q. The market in '55 was not regulated by this subsequent experience?

A. No, sir.

170 Q. I don't understand you to have formed any estimate of the real, legitimate cost of filling those street lots there?

A. I don't know what it cost the R. R. I could only guess, & tell what it would have cost myself to have filed them. We filled at about 25 cts. a yard. An ordinary lot, 50 by 150, would cost—well, we began at 14 cents and went up to 25 cts.

Q. Well, from $700 to $1,000 would do it?

A. Yes, for common use. They filled it probably 3 feet higher than other parties would, and then put gravel on.

Q. That's all.

JOHN H. TWEEDY.

171 EDWARD D. HOLTON, being sworn, testified as follows:

Q. You reside in the city of Milwaukee?

A. Yes, sir.

Q. How long have you resided here?

A. I have resided here 29 years.

Q. What has been your business in Milwaukee?

A. Merchant.

Q. Anything else?

A. Farmer.

Q. Just give a schedule, if anything else you have followed.

A. Banker.

Q. Is that all?

A. Well, that is enough.

Q. Have you dealt any in real estate in Milwaukee?

A. Yes, sir.

Q. Give us some idea of how much, more or less.

A. Yes, sir; more or less. I have bought & sold property during that period.

Q. Were you acquainted with the value of real estate in the 4th & 5th wards of Milwaukee in '55?

A. Yes, sir; more or less.

Q. What was lots 9, 10, & 11, in blk. 3, 5th ward & city of Milwaukee, worth in the fall of '55?

A. Well, there has been a suit in this county somewhere, & in which I gave testimony, & in that testimony I gave it. I think that was
172 my judgment at the time to which I have had reference since, & I put that property on Reed str., I think, at $150 to $200 a foot.

Q. Do you know the size of those lots?

A. I suppose they are the fifth ward size (50 by 155), I think. I don't know the depth. They run back to the water. Those lots are the usual frontage, but what the depth is, I don't know.

Q. What was the value of lots 1, 2, & 3, blk. 47, 5th ward, in the fall of '55?

A. I should say from $2,000 to $3,000 apiece.

Q. What was the value of lots 1 & 4, blk. 156, 4th ward, Milwaukee, in the fall of '55?

A. $500 to $600 a piece.

Q. What was the value of lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14, blk. 155, in the fall of '55?

A. I don't think that those were included in my testimony in this former suit. Well, from $1,000 to $1,500 apiece, I should think, at that time.

Q. What was the value of $\frac{1}{8}$ of blk. 157, except lot 8, in the fall of '55?

A. I will estimate the lots to be worth $500 to $600 apiece, & you can make your own figures.

Q. What was $\frac{1}{8}$ of the bayou adjoining blk. 157 worth?

173 A. I can't tell you. I don't know what its dimensions are.

Q. What is $\frac{1}{8}$ of lots 8, 9, & 10 & 16 & 17 worth in blk. 158?

A. Well, I will give you the value by lots & you can make your own calculation. I will put 8 & 9 at $4,000 apiece. I will put 16 & 17, which are further west & fractional lots, at $3,000 apiece.

Q. What do you do with 10?

A. 10 I put at $3,500; no, that is a corner lot, & it has got an alley to it. I will put that at $4,000, the same as 8 & 9.

Q. What is the value of lots 12, 13, & 14, in same block?

A. I will put 12 at $3,000; I will put 13 at $3,500; & I will put 14 at—I will put 13 & 14 at $3,200 apiece.

Q. What was the value at that time of the east half of lot 15, in the same block?

A. $1,500.

Q. State whether in estimating the value of those lots at that time you estimated their value in their then condition in respect to improvements?

A. Yes, sir.

Q. Can you state how much improvements were on all those lots at this time—say Sept'b'r 8, '55?

A. I cannot very definitely. I don't think there were any buildings of any account upon them. I think some filling, & perhaps docking was done on those lots on the river.

174 MARINER. On all the lots?

A. No; my impression is 156 was not filled. I think it required grading. And this block 157, I am giving prices there as it it was not filled. I am giving prices on the wharf property as if that had been partially dredged at least, & some wharfing done.

Q. What do you mean by the wharf property?

A. Blk. 158 is wharf property & lies along the river, & the other is inside property; 156 & 157 are inside lots, & are of much less value. And my impression now is—I am estimating the other value as given as if they were unfilled.

Q. Which unfilled?

A. Well, I imagine that my estimate was given for 157, 156, & 155, as though they were unfilled.

Q. How about docking on 155?

A. I think there were no improvements on 155 at that time.

MARINER. What would you estimate the lots in blk. 3?

A. From $150 to $200 a foot. I go upon the theory that that property was docked & filled at that time & the street made, on Reed str.

MURPHEY. Now, will you state what improvements were put upon any of those property between Sept'b'r 8, '55, & June 2, '60?

175 Q. Well, I scarcely dare to trust my recollection as to where the R. R. Co. began its improvements there, but I think it was later than '60, but you can determine it by exact facts.

Q. Can you tell what improvements were put on there between Sept'b'r 8, '55, & June 2, '60?

A. My impression is that the parties owning that property docked 155 in that period, but I dare not trust my recollection to say positively. The owners of that property went on & improved, but I think before the R. R. Co. purchased. Mr. Mariner was one of those owners, I think. I think they made improvements on 155 somewhere along in those years. But I have made my estimate on 155 on the theory that there was no improvements made there at that time at all. I do not recollect when that wharfing & docking was done. I should think along about '57.

That's all.

Cross-examination:

Q. Did that property increase any in value at any time after '55; and if so, when?

A. I don't think there was any advance in that kind of property in our town here; you may say from '56.

Q. Well, say from the fall of '55.

176 I don't think there was any advance in that property, except what betterments were put on to it, up to the time of the sale to the R. R. Co. I think that property remained in that locality very nearly in a fixed state, without advancing.

Q. What improvements were there on the property in bl'k 3 in the fall of '55?

A. Well, I have gone upon the theory in my estimate that it was all docked & all filled up, & that the streets & sidewalks were built. My theory in the estimate was that; I have assumed that that was done.

Q. Do you know how many times that street has been graded in the last 5 years?

A. They have put on 2 or 3 grades, I think, or changes.

Q. Had it ever been paved?

A. I should think it had been graveled & used as a graveled road as early as that.

Q. Has it been paved with stone since?

A. Yes; it was paved at one time with stone.

Q. Hasn't it been paved with stone twice since?

A. I guess never but once.

Q. Has not that street been raised a good many feet?

A. It is not any too high now. It is not more than 5 or 6 feet above the water.

Q. As a matter of fact, has not the street been made & settled away there again, so as to require filling twice since '55?

177 A. I don't think there has been any great settling. We have always erred in not getting grades high enough, but I think it has not settled much. I cannot charge my mind specially with that locality. I remember the paving with the stone pavement. It may have been paved twice, but I cannot recollect that; and then I should say when that pavement was removed that there was new filling there, but what it was I don't remember.

Q. You owned some of those lots once, did you not?

A. I owned, as near as I can now recollect, 2 or 3 lots in this bl'k 157. I can't now recollect how many, but I should think 2 or 3 lots, & then I owned in 155, at one time, a number of those lots, but I cannot now say how many, but 2, or 3, or 4, & I don't know but more.

Q. Didn't you also own some in 158?

A. Yes, sir; I said so.

Q. You said in 157.

A. I don't know that I ever owned any in that. I meant 158, & some in 155, & I should think one or two in 156. I sold at one time a list of lots there, but I cannot tell from recollection what ones.

Q. When did you sell them?

A. I cannot distinguish the year now; I should think '54 or '56, or somewhere along there.

178 Q. What improvements were added to those lots that you sold to them before the time which you refer to in your testimony for the fixing of the value?

A. I don't think any.

Q. What did you sell those lots for?

A. I cannot tell you from recollection. I should think about the figures I have fixed here.

Q. How did you get your pay?

A. Part of it in money & part of it in stocks of the company.

Q. What company?

A. The Milwaukee, Fond du Lac & Green Bay road, & I got my money for the stock, I think.

Q. Now, are you sure that you got any stock for those lots?

A. Yes, sir; I think I did.

Q. Are you sure that you got any money for them?

A. I took a mortgage, & got the money on the mortgage?

Q. What amount of mortgage?

A. $4,000 or $5,000.

Q. How much stock did you get in addition to the mortgage?

A. As near as I can recollect, I think somewhere about $5,000 or $6,000 for the property. That I sold to Moses Kneeland, under a very patriotic appeal to me to do something for the city, at the time we were going to get this air-line road to Fond du Lac.

179 Q. Was that before or after the La Crosse road was started?

A. I can't tell.

Q. Now, did you get more than $5,000, part mortgage & part stock, for all the lots you sold?

A. O, yes; it was called $9,000 or $10,000, & I think it is so entered on my books. I think $10,000 was the price. But I sold the property with the distinct understanding that the road was to be built. I always felt hurt & wounded about the fact that I was silly enough to convey the property instead of making a contract. Because I did it under the distinct understanding & expectation that that very important road would be constructed & brought into this city. I regarded myself as having made a large donation to that road.

Q. Was that property worth more or less at the time you sold it than it was at the time you fix the value here?

Q. I cannot tell. If you can tell me what time I sold it, I can tell.

CARY. The road was started in the spring of 1853.

Q. I want to know if you have fixed a different value in your mind as the value of that property from your idea of the value at the time you sold it to the company.

A. I should say the general prices of property had advanced since '55.

180 Q. You fix the value, you say, from your recollection of this property?

A. As I stated, from reading my testimony I have refreshed my recollection by looking at the testimony which I gave before; but I don't remember when it was I gave it. But I recollected that I had given testimony in this case, & looked at it, & now you ask me what the variation was between this testimony I now give & the estimate I had of the property at the time I sold it. If I have got any, I should think it would be somewhat above what it was when I sold it. I have not looked to see what the prices were at the time I sold it. I remember that I always regretted very much the contract I made for the conveyance of that property, because I thought the R. R. was about to be built, & I sold it very much cheaper on the expectation that the road would be built. Now, what I sold those lots for I have not any recollection now, only that it was about $10,000 in all, & I took some in mortgage & some in stock. I don't know but I paid a subscription; I cannot tell.

Q. How large are lots 1 & 4 in 156?

A. I cannot tell. It is an angular block in there. Those were both fractional lots; they had a good deal of frontage, but small area.

181 They are a key to the block, & for that would be much more valuable, because that made up on the frontage. I estimated them, therefore, to be about alike.

Q. How deep was the water over those lots at that time?

A. Well, there was a natural bank around the line of the river, hence these front blocks were out of the water considerably, & this 156 was under water 2 to 3 feet.

(Witness explains map.)

Q. Hav'n't you some idea of the area of the ground of those two lots in bl'k 156?

A. No, sir; I have not. You can figure it. I should think the two lots would make one whole lot 50 by 150.

Q. How large are those lots in bl'k 155?

Q. I guess they are only 40 feet wide & perhaps 100 feet deep.

Q. Now, what is the highest price you have known lots to sell for south of Spring street bridge, by the foot, always excepting those two lots that the Mississippi road had to take, of Dan'l Wells?

A. I have sold for $250.00 a foot.

Q. When?

A. 2 years ago.

Q. What improvements were there?

A. Nothing that I value. It had a tumble-down brick shanty on it.

Q. How large was the lot?

A. 25 by 150.

182 Q. What block was it in?

A. 145.

Q. Is that the highest price you ever knew lots to sell for on that street?

A. I have no distinct knowledge of any price at which property has lately been sold at.

Q. Well, at any time?

A. Well, I don't recollect of any being sold higher.

Q. Did you ever know of any property south of Spring street, on the river, to sell for over $250 a foot—south or north either, on the west side?

A. I don't know that I have.

Q. How large are those lots on the west side of the river between Spring street & the Menomonee River—the river lots?

A. I think they are 40 feet on the river.

Q. How deep?

A. It depends upon the curve of the river.

Q. How deep are the narrowest?

A. I think 150 feet & some run to 200 feet, & more too.

Q. For what is that property in 156 valuable, or was it ever valuable?

A. The best answer that can be made is "to sell," like any other property in the city; if the city grows, it has a value, it being contiguous to wharf property; some time it will be valuable.

Q. For what purpose could it be valuable?

183 A. The facts recently developed that it has been used for wharf property has made it immensely valuable, otherwise it might have been put into lumber or ship-yards as other property.

Q. Was it as valuable to use as the property on the west side of West Water street between Spring & the Monomonee River?

A. No; I don't think it was.

Q. Has it ever been worth as much into $\frac{1}{3}$?

A. Well, there was a time when West Water str. property was very

much such kind of property, unused & unoccupied property, & not until we made our improvements did it advance into use & consequence & of more intrinsic value.

Q. Then you say at one time it was as valuable as property between Spring str. & the Monomonee River?

A. Well, no; I don't say that between Spring, because property contiguous to Spring str. has always been useable.

Q. Well, from Spring str. to the Menomonee River?

A. I don't think that it was as valuable at any time as some portions of that.

Q. Well, pick out the worst portions of that & then say.

A. Well, I am inclined to the opinion that there has been a time when bl'k 156 has been superficially foot for foot as valuable as perhaps bl'k 86.

Q. When was that time?

A. I think back to about '46 or '48.

184 Q. What were those lots worth then, either of them? What would they have sold for in 1848?

A. I should think $200 or $300 apiece.

Q. What would lots on the north side of the Menomonee River sell for in 1850 & '51, on the north of bl'k 155?

A. That was about the time when the Prairie du Chien Co. took possession of that property & made their depot. Well, then came a change.

Q. Well, after the location of that depot?

A. Well, my recollection is that those wharf-lots were worth from $700 to $1,000 at that time.

Q. What, the inside lots?

A. Well, 4 or 5 or 6 hundred dollars.

Q. Was there any difference in the increase of value in that property during the years '55, '56, & '57 than in the increase of property all over the city during those years?

A. I think there was an established & general feeling among men that the location of that depot there centralized that property & if the city grew it would become commercial property. I don't think there was any greater increase.

Q. Was there any less?

A. I don't know that there was. I think the judgment of men was established as to the ultimate value of property there.

185 Q. How much did property in the 4th ward generally increase from Sept'b'r 8, '55, to the 1st of July, '57?

A. Well, those were rather prosperous years in general, & I should think there was a general increase from '55 to '57, but it is a difficult question to answer how much. I think that West Water str. appreciated during those years more in proportion than that kind of property in the back part of the ward. It is difficult to answer your question.

Q. How much did West Water str. property appreciate from Sept'b'r, '55, to the 1st of July, '57?

(Obj. to as irrelevant.)

A. I should think—my idea is that West Water str. in '55, & '57, advanced in those two years. I should think that property advanced 25 per cent. in those 2 years. Still, it is so long ago I cannot be very definite. I have no data without sitting down and looking in my books.

CARY. I understand you to say now, your present testimony is not

from your recollection of the facts as much as it is from your examination of what you swore to once before?

A. I referred to my testimony then to refresh my recollection & my knowledge about it, and in general to the accuracy of that testimony at that time. I give weight to it in guiding my opinion now.

186 Q. What had this property that had been docked in '55 ever been used for?

A. I don't think it had been built upon at all, but had occasionally been used for storing material upon.

Q. What part of it had been used for that?

A. I cannot say.

Q. Had any of it ever been put to any use, except the lots in bl'k 3 & part of the lots in bl'k 158?

A. No; I should think not.

Q. Had the lots in bl'k 158 ever been used at all except to build a few vessels upon?

A. I don't think any buildings were put onto it.

Q. Had they ever been used for anything?

A. It is my recollection that there was some lumbering done there.

Q. What, in '55?

A. I presume so, but I cannot fix it definitely.

Q. Did you ever use those lots at all for any purpose?

A. I don't know that I did.

Q. How happened they to be docked?

A. Well, I really cannot answer; I have forgotten.

Q. Wasn't it done by the city?

A. Yes, sir.

Q. Did the owners of the lots ever pay for the docking?

187 A. No, sir; I think not. I think now that I did have a lease out to somebody, but I cannot tell who. I think it was to some of those ship-yard folks.

Q. Did you ever get any rent except a mere nominal rent?

A. I cannot remember.

Q. Do you remember of any sales of that property at the prices which you mentioned—the property around there?

A. No; I cannot tell. I think there was a sale made, but I cannot recollect the time, & I may not be able to recollect the parties.

Q. Did you ever know of any lots in bl'k 3 to be sold?

A. There was a purchase 2 or 3 years ago by Houghton. I know along there there was a speculative demand for property. George Walker was offered a very large sum at one time for that very same property & regretted that he did not take it afterwards. Somebody offered him, I think, $48,000 for that property.

Q. Did you ever know of any of those lots being sold down there at a price that you can fix?

A. No; I cannot say definitely. Houghton paid $35,000 for his purchase, but I don't know exactly what that purchase was, but it couldn't have included 10 & 11.

Q. Is not that the biggest price you ever knew property to be sold for in that neighborhod?

A. I should think it was.

188 Q. When was that purchase made?

A. 2 or 3 years ago.

Q. Did you ever know of the sale of a lot anywhere south of the Menomonee River & in the 4th ward for over $1,500 a lot, since the sales in '36?

A. Why, I sold a man last summer in bl'k for $100.00 a foot.

Q. Did you ever know of any other sale than that at a greater price than that?

A. I know of no sale except what was sold to the R. R. Co.

Q. Did you ever know any one to sell property there & get as much as you got for yours when you sold to the R. R. Co., up to '55?

A. Well, I don't recollect of any sales. I don't know whether there was more or less. I have no recollection of any sale being made.

Q. Did you ever know, up to '55, a sale of property anywhere on the west side of the river at the rate of $100 a foot front, up to Sept'b'r, '55; if so, what?

A. My impression is Mr. Mitchell sold a lot to the R. R. Co., but I cannot say the year that he did the selling. My impression is that he got $100.00 a foot for that lot—lot 15, bl'k 146.

Q. How large is that lot?

A. 40 by 230, I think.

Q. That was at that time in actual use by the Mississippi Co. & had been for some time, hadn't it?

189 A. I don't think that at that time the company had entered upon its use. I a'n't very certain whether that was $4,000 or $8,000. I am almost of the opinion that Mr. Mitchell got $8,000.

Q. Which at that time was worth more than lots in bl'k 155?

A. I think I should rather have the lot than the bl'k in 155.

Q. Than bl'k 155?

A. No. I am mistaken about that; I thought it was bl'k 156 & not 155 you were asking about.

Q. Have you any idea that the property in bl'ks 155, '6, '7, & '8, since '55, could have been rented so as to have paid taxes?

A. O, yes, sir.

Q. I mean down to the time the R. R. Co. took it, from '55 to '65?

A. Yes, sir.

Q. Now, have you any data by which you can refresh your recollection as to the time that you put the value upon this property, by books or anything else?

Q. I put my value upon that from my general impression at the time that I determined those values.

Q. How did you get a patent title to those lots or any of them?

(Obj. to as immaterial.)

A. I paid money for it, I think.

190 Q. Did you ever get any of those patent titles except by exchanging tax titles on other property for them?

A. Yes, sir.

Q. Which ones?

(Obj. to as immaterial.)

A. I cannot tell you.

Q. Did you have anything but tax title to that property you sold to the Green Bay R. R. Co.?

A. I don't recollect what my title was to that.

Q. Except the time the R. R. Co. bought this property, was there ever a sale of any of this in your locality to any person for actual use?

A. I don't recollect.

Q. How much would it have taken according to your estimation to have made blk. 158 so that it could have been used in '55; the whole of it?

A. My recollection is it was pretty well filled at that time. Those

lots were docked & filled pretty much. They may not have been filled to their entire depth, but the major part of it was.

Q. Could any of the lots have been got on to with a team, except lot 7, without trespassing?

(Obj. to as involving a legal conclusion.)

Q. Was there any filling at all in Point street at that time?

A. Well, I should not suppose that all of Point street was filled, & yet some of it may have been filled.

Q. Now, was any of that property used in '55?

191 A. I cannot fix the year. My impression is that the ship-yards were there.

Q. How much were those lots worth in '57, when property was the highest here—in bl'k 158?

A. Well, I cannot say. That would not very materially vary from the prices I have fixed before. I should think that was about the average price for about 2 or 3 years.

Q. Did you ever hear of the sale of any other lot prior to Sept'b'r '55, on the west side of the river, at $100 a foot or over, except the one you have mentioned of Mitchell selling to the Mississippi R. R. Co.?

A. I don't recollect of any sales now.

Q. I wish you would look a little more to this, Mr. Holton, because I know you are a great ways out of the way & I know you don't mean to be. I want you to give, if you can find, a lot that was ever sold on the west side of the river, up to that time, for $100 a foot?

A. Well, take the case of Mr. Mitchell. I first thought it was $4,000, but now, come to think about it, I am inclined to think it was $8,000. But that is a matter of record & you can find out about it. It was something that occurred 10 or 15 years ago.

Q. Well, the misfortune is, it is all guess work; now, I want to know if you can get at it?

A. Well, there is an actual fact here with regard to my sale. That is a fact. Now, I tell you if you want that fact to go & get it.

192 What I want you to do is—I know that all this time you have been dealing in property & you can get right at those facts.

A. I can give you a list of all my purchases & sales.

Q. I wish you would give the highest price that you ever sold any property there for.

A. I sold that list of property for about $10,000. There is one of the best facts there is. When I gave this other testimony the things were fresh in my mind then, but it has all gone out of my mind now. But what constituted those opinions then, I cannot tell without a good deal of work.

EDWARD D. HOLTON.

193 Parties appeared as before.

Minutes of the proceedings of the board of directors of the L. C. & Mil. R. R. Company read in evidence and admitted to be correct; from which it appears that on the 7th of Febr'y, 1855, at a meeting of the stockholders of said co., held in the city of Milwaukee, the following-named persons were duly elected a board of directors of said co. for the year next ensuing said Febr'y 7, 1855, to wit: Stoddard Judd, Heram Barber, S. L. Rose, Byron Kilbourn, Moses Kneeland, Jas. Ludington, Wm. Davis, E. D. Clinton, Moses M. Strong, Edwin H. Goodrich, Edvin Townsend, Saml. T. Smith, Hugh McFarland, Russel S. Kneeland, Chase A. Stevens.

And from which it further appears that on the same day it was re-

solved by said newly elected board of directors that thereafter the ex-committee of said b'd, so consisting of 7 members, viz, the president, vice-president, and 5 directors to be elected by said board. And from which it further appears that Messrs. Byron Kilbourn, Edwin H. Goodrich, Moses Kneeland, E. D. Clinton, and Edwin Townsend were duly elected by said board as such ex. committee, in conjunction with said president & v. president.

And from which it further appears that on the evening of the day of the election of said new board of directors said newly elected directors held a meeting and duly elected Stoddard Judd president of the
194 said R. R. Co. & C. D. Cook vice-president of said R. R. Co.

AUGUST 6TH, 1869.

Parties appeared pursuant to adjournment, and the cross-examination of Mr. Holton was continued.

Q. Did you find out anything more?

A. I did.

Q. Did you find out that that property was any higher?

A. In 1855 Mr. Finch and I were on the committee for the purchase of that property for the Milwaukee & Mississippi Railroad Company, and that with the sales I made personally is the foundation of my opinion as to value.

Q. When was that property the highest?

A. It has never been less since 1855 than the prices I have fixed in my examination. I have no knowledge or recollection of any sales at lower figures.

Q. You have improved more or less property of this kind?

A. Yes.

Q. How much, in your judgment, was it worth to dock and fill block 155 in 1859, and dredge the river 70 feet wide?

A. Provided there had been no filling upon it, from 20 to 25 dollars a foot. I have never made my docks of solid piles—I mean a docking so as to hold the earth. I think $25 a foot would make a continuous solid docking of piles; as between such a dock as I have always put in and this solid docking there might be 2 or 3 dollars difference. I was
195 one of the firm of R. P. Cady & Co., dredgers, in 1857. I have not the possession of the books.

Q. Do you recollect what this firm was paid for dredging block 155?

A. I don't; perhaps some 25 or 30 cents. I can't give the gross sum. Can't tell you where there books are; perhaps they may be destroyed. I made a general destruction of some of the papers a few months ago. I don't know where Cady is, or whether he took the books or I.

Q. Didn't we pay you 30 cents for the first throw and 60 c. for the second?

A. No; you may have paid 25 & 30. I think you paid over 35 for the highest. I don't think you ever paid as high as 60 c. for two throws. You may have paid 40 c. No dredge had as high as 60 c., except in hard pan. The first cut was usually from 20 c. to 25 c., and second 25 c. to 35 c. I would say at the outside 40 c.

Q. You say that the utmost was paid you for that work?

A. I won't make any such answer. I was not the actuary in the matter, and a contract might have been made without my knowledge, though I presume I knew at the time. I am having that same work done now, just such work as in 1855, and can tell you, if you want to get at the price of dredging.

EDWARD D. HOLTON.

196 D. G. POWER, being sworn, testified as follows:

Q. You reside in Milwaukee?

A. I do.

Q. How long have you resided here?

A. Since 1849.

Q. What is your occupation?

A. Land agent.

Q. How long have you been in that business?

A. I should think about 19 years.

Q. Here in the city of Milwaukee?

A. Yes, sir; I have been absent a few months at a time on real estate matters, but I reside here permanently.

Q. Were you acquainted with the value of real estate in the fourth and fifth wards of Milwaukee City in the fall of 1855?

A. I was somewhat familiar with the value of property in those wards at that time.

Q. What was the value in the fall of 1855 of lots 9, 10, and 11 in block three, fifth ward, and city of Milwaukee?

A. The value of property there was prospective a good deal at that time, that is, the owners look upon it as valuable property. The value at that time was not such as that anything could be realized on the investment like an income.

Q. Well, its market value is what I enquired about.

A. I should think in 1855 a lot in that block there would be worth ten to twelve thousand dollars for the three lots.

197 Q. What was the value of lots one, two, and three in block 47, in the fifth ward, city of Milwaukee, in the fall of 1855?

A. Well, the value was prospective again. I suppose that lots would be held fronting on Reed street, one, two, and three, at about twenty-five hundred dollars apiece.

Q. What was the value at the same time of lots one & four in block 156, fourth ward?

A. Well, I want to qualify that. The principal value of lots there was in connection with the improvements and railroad depot and things of that kind, and they were held high there in consequence of the prospect there was of a railroad depot being established there.

Q. Now, what was the value of lots one and four, block 156, fourth ward?

A. Well, lot four is a small lot; I should think two thousand dollars for the two.

Q. Now, what was the value of lots one, two, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, and fourteen, block 155, fourth ward?

A. They were held there at two thousand dollars apiece.

Q. Is that your judgment of the market value of those lots at that time?

(Objected to because there should be proof first that there is a market value.)

A. I think if any one had wanted to buy them, I would have asked that for them.

Q. State whether you think that was their market value.

198 A. It is difficult to say; if they would bring that, it was their market value.

Q. If you would ask that for them, would it be evidence of their market value?

A. If I held them at that and could get it, it would. There is hardly any property in the city more difficult to form an estimate of than that.

Q. What was the value of one-eighth of block 157, except lot eight?

A. Well, I should think about the same.

Q. Two thousand dollars?

A. Well, no; not quite. If they were water lots at that time they were worth that, but if they were not water lots, they were not worth quite that.

Q. Don't the map show upon whether they were or not? Just look and see.

A. No, sir; I cannot judge from the map, but they were a thousand dollars apiece, any way.

Q. What was one-eighth of the bayou adjoining block 157 worth at that time?

A. I could not tell you anything about that. I don't remember anything about it. I have no idea as to the value of it.

Q. What was one-third of lots eight and nine, ten, sixteen and seventeen, block 158, worth at that time?

A. A thousand dollars a lot. I think they are cheaper at that price than any of the other lots.

MARINER. What do you mean; one-third interest for a thousand dollars?

199 A. Yes, sir; a thousand dollars for a third of each lot.

MURPHEY. That is, that the lots are worth $3,000 a lot?

A. Yes, sir. Now, I wish to say that there was a time after 1855 that those lots were not worth anything like that.

Q. Now state what the value of lots twelve, thirteen, and fourteen of that same block were at the same time.

A. About eight hundred dollars; the same ratio.

Q. I am asking about the value of those whole lots.

A. Yes, sir; eight hundred apiece.

Q. What is the east half of lot fifteen in that block worth?

A. About four hundred dollars.

Q. Is that a water lot?

A. Yes, sir. It is worth the same as the others; I should think it was worth eight hundred dollars for the east half.

MARINER. They are forty by a hundred?

A. Well, I think the dock-line being established makes them longer, but I would alter my estimate and make it five hundred instead of eight hundred on that account.

Q. Now, I want to ask you whether in this estimate of the value of those lots you estimate their value in their then condition?

A. O, yes; in their then condition.

Q. Do you know of any improvements having been put upon those lots or any of them between the eighth day of Sept'ber, 1855, and the second day of June, 1860?

200 A. No, sir; I don't remember of any. I had a contract for putting in piles at the elevator, but that was afterwards.

Q. That's all.

Cross-examination:

Q. In your estimate of those dock lots you supposed them all docked and filled?

A. No, sir; I supposed they would be docked and filled in time, and then they would be very valuable, and I put the price on them accordingly. For instance, in block 158 there was a good dock there and

lumber piled there and a mill, and there was a first rate opportunity to pile lumber around the mill there, and they were very valuable for that alone; they were capable of being made valuable for lumber yards and manufacturing purposes of any kind.

Q. Block 158 was docked in 1855, wasn't it?

A. I think the mill was there in 1855.

Q. No, it was not there in 1855; it was put there in 1857, I think.

A. It was considered very valuable property down there.

Q. When was block 158 docked, according to your recollection?

A. I don't remember. I think the larger portion of it was not docked until they commenced to build the elevator.

Q. Did you ever see block 158 when it was docked and filled?

A. Yes, sir.

Q. When?

A. It was in an early day, but I can't mention the time.

201 Q. Did you ever see it before 1849?

A. No.

Q. Then you never saw it when it was not docked. Now the question is when was block 158 docked?

A. I can't say; they commenced dredging there, and I should think it was after they commenced the elevator, but I don't know.

Q. When was the highest price of real estate here in the city?

A. From 1855 to 1856.

Q. Well, what season did real estate bear the highest price in the city?

A. I think 1855. I think you could sell in 1855 much more readily than in 1856.

Q. How was it in 1857?

A. You could not sell at any price, almost.

Q. Where did you keep your office in 1855?

A. Where the Menomonee Beer Hall is now.

Q. Where did you keep it in 1856?

A. I think where Webber's jewelry store is.

Q. Where in 1857?

A. I think in the Newhall House, or on Michigan street, I forget which.

Q. When was the Newhall House opened?

A. 1855, I think, or 1856.

Q. It was opened in Sept'ber, 1857?

A. Then I had my office in Webber's jewelry store if the Newhall House was opened in 1857.

202 Q. Haven't you got this matter of price all mixed up; that is to say, the time of the highest price?

A. I think the very highest price was in 1856. I think I could sell much better in 1855 than in 1856.

Q. Have you got any memorandum of your sales and the dates?

A. I have.

Q. Can you put your hand onto it readily?

A. I can.

Q. I wish you would do so.

A. I have got a land book.

(Witness goes for his memorandum.)

WITNESS. I have given my land-book in another matter where I was examined before, and I have not got it back again. I find that the majority of judgments against me were in 1857, and I know that in August, 1857, the crash came, and it was impossible to sell anything in

August, 1857, for you could not get twenty cents on a dollar. I went to A. C. May and asked him, and he said that the bottom fell out in August, 1857. I know now, and I repeat what I stated before, that you could sell and get better prices in 1855 than in 1857. I think 1856 was the best year we had.

Q. What property do you know of being sold in 1856 that was sold again in 1857?

Q. Lots of property I mentioned was sold in 1857 that was bought in 1856.

Q. Well, what property?

203 A. Some eight or ten lots in Sherman's addition, I think, that were sold in 1857. There was 28 acres out here on the Lisbon plank road; then it was sold in May, 1857, for about, I think, fifty per cent. less than I could have got for it in 1856. It was sold to Mallory and others at about fifty cents on a dollar lower than it was bought for.

Q. How did they sell it?

A. I gave them a deed in security.

Q. Then it was a forced sale, was it?

A. If the times were equal to what they were in 1856 I could have got twice that for it.

Q. Do you say that property was worth more here in September, 1857, than in September, 1855?

A. No, sir; I say less. I could get better prices in 1855 than in 1857.

Q. The prices you give here are the very highest prices that that property ever bore?

A. The owners might have valued it at more than that.

Q. Have you ever known of a sale down there at anywhere near the figures you have given here?

A. No, sir; because from the time of Col. Walker's sale to the railroad it was held at a high rate.

Q. Do you remember of Walker's sale to the railroad?

A. He told me all about it at the time.

Q. Do you remember what he sold at?

A. He told me that he didn't look upon it as a sale, but it was to induce the depot to come there.

Q. Do you remember the price?

A. I remember it was ten thousand dollars.

204 Q. For what?

A. A number of lots there.

Q. Did you ever hear of property being sold down there at a higher price than Walker's sold for at that time?

A. I don't remember of any sales.

Q. What was property on West Water street worth in 1855, say half way from Spring street to the Menomonee River?

A. In 1855 from three to five thousand dollars a lot, and back between that and the bluff, on Third, Fourth, and Fifth streets between Clybourne and Fowler streets. I know the estimate that Lewis put upon his lots; that was $3,000 a lot.

Q. That was after they had filled the street, wasn't it?

A. I suppose that lots in there would sell for fifteen hundred dollars a lot.

Q. Before the streets were made or after?

A. Well, a good deal depended upon the man who held the property and the man who bought. I have sold property there for twelve

hundred dollars where property right beside of it was held at twenty five hundred dollars.

Q. What I want to get at is this, was the price of fifteen hundred dollars before or after the lots were filled?

A. I should think in 1855 was before the lots were filled. Some of those lots could not be sold since for eight hundred dollars.

205 Q. Where those lots in the fourth ward that you have been speaking of in your direct examination susceptible of any use?

A. The chief value I put upon them was for depot grounds; taking it collectively.

Q. Were they susceptible of any practical use?

A. Yes, sir.

Q. For what?

A. The best use they were adapted to was for a railroad depot.

Q. At that time was there any railroad depot located there?

A. No, sir.

Q. Were not all the railroads that were then built in the city of Milwaukee provided with depot grounds somewhere else?

A. They were; at least all the roads coming in here had depot grounds.

Q. What has put up the price of that property?

A. The prospect of having it brought into use as depot grounds and manufacturing, or lumber yards, &c.

Q. Was it used for lumber yards at all until after 1855?

A. I should think not. It might have been, a little of it, near the Menomonee bridge.

Q. Wasn't the fact of the location of the depot of the Milwaukee, Fond du Lac and Green Bay Railroad Company the first thing that put up the price of property there?

206 A. Yes, sir; there was a prospect of it immediately being brought into use.

Q. What were those lots worth in 1853?

A. Well, that would depend upon what they were wanted for.

Q. Now, in your recollection, how much money?

A. I think it was very difficult to sell them then. I haven't any idea what they were worth. I could not form any estimate.

Q. Have you any idea that in 1853 they could have been sold at all?

A. It was very difficult, unless a man had the means and would hold them until something would turn up. It was only a question of time about their being developed; if one enterprise didn't go there, another would. It was only a question of time.

Q. Have you any idea of the expenses of what you call developing that property?

A. It would cost a good deal, I know. I think that it would average $500 a lot, probably more than that. I think that taking the stuff out of the river and bayous and canals—I think five hundred dollars would improve it; three hundred would dock it, and two hundred fill it.

Q. How deep would it have to be filled?

A. O, there was places it would have to be filled four or five feet; probably three feet on the average.

Q. Suppose it had to be filled on the average fourteen feet?

A. Well, then, I think that must have been a pond. I think if

207 they dredged it, and used a dredging machine, and saved the trouble of carrying away this stuff on scows, I think certainly five to seven hundred dollars a lot ought to fill those lots.

Q. Suppose, as a matter of fact, after you dredged all there was to be

dredged that three-quarters of the filling had to be brought in from the country somewhere?

A. Well, that would have increased the cost very materially; then it would be very difficult for me to form an estimate; but I can't understand why there was fourteen feet on the average, but the pond there was deep, I know.

Q. How do you happen to know how far that pond extended?

A. Well, I don't know; probably three hundred feet by seven hundred. I guess about two hundred by three hundred.

Q. Suppose that all the block 156 and 157 and the bayou, and all of Point street, and all of Union street, and Peters st., lots one, two, and three, in 1857 had to be filled fourteen feet?

A. How many square feet would that be?

Q. About four hundred by six hundred feet. And there was no earth to be dredged out of the river to fill it with. What, in your estimation, would be the value of it; the value of the lots?

(Obj. to because the evidence is that there is not fourteen feet of water there.)

A. Well, at twenty-five cents a yard, it would take thirty thousand dollars.

Q. Now, where is the nearest accessible place to fill from?

208 A. Why not take it out of the river and those canals there?

Q. Well, suppose that the river was all dredged out and not enough to fill 155 and 158?

A. Well, then I would fill it up at 25 cents a yard, and bring it in by railroad.

Q. Well, if there was no railroad there?

A. Well, then I would take it out of the straight cut by scows, or out of the beach.

Q. Could you do it for that?

A. Yes, sir. Of course if it had to be filled with horses and wagons, fourteen feet, it would be difficult to get in there; but, taking it altogether, it could be done for twenty-five cents a yard, and that would be about thirty thousand dollars, and then if the property was worth one hundred thousand dollars it would leave a margin of seventy thousand dollars.

Q. How large do you estimate lots one and four in block 156?

A. I could tell you if I was in my office. Well, lot four is, I suppose, forty by a hundred, and lot one would be about seventy feet on one side and sixty on the other and about sixty on the other, in a triangle; about ninety feet on one line and sixty on the other.

Q. Well, how much would it be squared?

A. You could average it thirty by forty-five.

Q. Now, how much would a piece of ground at that time on

209 Wisconsin street thirty by forty-five be worth between East Water and Main streets?

A. Well, about four thousand dollars.

Q. Suppose you filled the ground ten feet and made the streets around the whole of it, how much would it cost?

A. I think about six hundred dollars would make the streets.

Q. Well, how much more would it take to make the lot?

A. O, about the same.

Q. That would make, then, twenty-two hundred dollars for that lot, wouldn't it, filled?

A. Why, that would make two lots.

Q. Now, don't you know that that building right over there, in 1855,

number ninety Wisconsin street, where Kinsman's and Wardner's drug store is, sold in 1855, the building and lot, for six thousand dollars?

A. It was two hundred dollars a foot and two thousand dollars for the building.

Q. What was it worth per lot to improve block 155, docking it and dredging the river and filling the lots?

A. I think that seven hundred dollars would have docked and filled the lots, because certainly you must get some stuff to fill with out of it. I think it would take on the average to fill and dock it about what I said before, because filling and docking together you can do it at much more advantage than you can do either alone.

210 Q. What would the rent of those lots be worth docked and filled, in 155 and 158, from 1858 to 1864, all ready to use?

A. Well, I should think they were worth one hundred to one hundred and fifty dollars, if a man wanted them.

Q. During that time what would lots on West Water street rent for during that time, and up to five years ago?

A. Two hundred and fifty to three hundred dollars.

Q. Choosing the best location?

A. Well, I should think West Water street was not but by two or three prices the best location; it would be better.

Q. Which are the largest lots?

A. West Water; but for lumber yards and the facilities for lumbering and shipping the ones below would be the most valuable.

Q. But this was before the railroad was there.

A. Well, I think the West Water street lots were much more valuable and would bring bigger rent.

Q. As a matter of fact do you know that any of that property was rented during that time?

A. No, sir; I don't know of any, except where the mill was there.

Q. Well, what would you be willing to take the property and pay the taxes on it and dock the lots for during 1858 and up to 1862?

A. Well, if I had the money I would pay the taxes.

211 Q. I mean for the lots on all this property, the bayou and all.

A. Well, I am not prepared to say; I don't know what they would rent for or the amount of the taxes.

Q. Well, before the railroad was built there and the elevator, would those lots ordinarily rent for over ten per cent. of what a lot on West Water street would?

A. With the exception of those lots near Abbey's mill, I should think not.

Q. Would a lot there at the mill rent for anywhere near as much as a lot on West Water street?

A. Yes, sir; they claimed it was very convenient there for lumbering, because the Prairie du Chieu depot was there.

Q. What proportion would they bear of surface?

A. I should think a West Water street lot was more than twice as large.

Q. Twice and a half?

A. Yes, sir, probably.

Q. Wouldn't a West Water street lot be worth three to five times the rent that a lot at the mill would?

A. No, I think not.

Q. Well, what proportion?

A. Well, that would depend how high up towards Spring street it was.

Q. Well, down where the lumber yards are?

A. Well, I don't think it would be more than that.

212 Q. Well, there was no place for a lumber yard near the mill?

A. I think there was.

Q. Was there anything more of depot there than the mill and the approaches to it?

A. I don't remember the size; I used to see lumber there.

Q. Well, the lots are a hundred feet deep there, now don't the coal yard and the mill and the approaches to the mill take up that hundred feet?

A. I think there was lumber there to'.

Q. Whereabouts?

A. There was lumber beyond the mill.

Q. I understand that, but that was on other lots.

A. Well, there was a pile of cedar posts, &c., there.

Q. Was this property ever of ready sale?

A. I think not.

Q. After it was determined that there would be no depot there for the present, did that property appreciate or diminish in value?

A. After the Milwaukee, Fond du Lac and Green Bay road was consolidated with the La Crosse road, I think it affected property generally in the neighborhood, not alone there but in the neighborhood; I think it diminished property.

Q. Did you know of a sale of property in the neighborhood between that time and this and the sale to the St. Paul Company for depot grounds?

A. No, sir.

213 Q. I mean between the Menomonee River and the Milwaukee River, in the fourth ward.

A. No, sir; I don't remember of any.

Q. Was it valuable for any use at all without filling, docking and dredging?

A. No, sir; it was necessary to dock and fill to make it valuable.

Q. And it was then only fit for manufacturing and lumbering and coal, or some such thing?

A. Yes, sir.

Q. Well, has any property down there been used to *carry* extent for such purposes as that?

A. No.

Q. You understand that the value of all this property was simply speculative?

A. I didn't intend to testify to that; I think the position on the map in regard to the two rivers made it have an intrinsic value and only needed to be developed to make it valuable.

Q. That's all.

D. G. POWER.

214 Before the examiner, May 9, 1872. Present, N. S. Murphey, for complainants, & John W. Cary & E. Mariner, for the def'ts, for whom they are solicitors.

EDWIN H. GOODRICH, being called and sworn on behalf of the complainant, says:

Q. You reside in Milwaukee and have resided here how long?

A. Upwards of twenty-five years.

Q. From 1858 or '9 until 1865 what was your business?

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EDWIN H. GOODRICH, being called and sworn on behalf of the complainant, says:

Q. You reside in Milwaukee and have resided here how long?

A. Upwards of twenty-five years.

Q. From 1858 or '9 until 1865 what was your business?

A. I was connected with the La Crosse & Milwaukee and Milwaukee & St. Paul Railway Companies as superintendent and general manager.

Q. When was the Milwaukee & St. Paul Company organized, do you remember?

A. I am unable to tell; I think in May, 1863.

Q. From the organization of that company until 1865 what office did you hold in that company?

A. The office of general manager.

Q. Are you acquainted with lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14, in block 155, and lots 1 and 4, in block 156, the undivided one half part except lot 8 of block 157, and the bayou, adjoining said last-mentioned block, thence running to the Milwaukee River; also the undivided one-third part of lots 8, 9, 16 & 17, in block 158, also lots 10, 12, 13 & 14, and the east half of lot 15, in block 158, all in the fourth ward; also lots 9, 10, & 11, in block 3, and lots 1, 2, & 3, in block 47, in the fifth ward of the city of Milwaukee; and, if so, how long have you known the same?

A. I have a general knowledge that there is property down there of a similar description to that.

215 Q. How long have you known that property?

A. Ever since I resided in Milwaukee.

Q. Have you any general knowledge of the conveyance of that property or the sale of it by any person or persons, and, if so, by whom, to the Milwaukee and St. Paul Railway Company?

(Objected to.)

A. I know the St. Paul Railway Company purchased what I suppose to be that property.

Q. When; what year?

A. I don't know whether it was it 1863 or 1864—1864 I think.

Q. Have you any general recollection as to the price paid by the Milwaukee & St. Paul Railway Company for those lots?

A. My impression is that the entire depot grounds down there cost about $136,000.00, but what the cost of these particular pieces was, I am unable to state.

Q. Do you know of the defendants James Ludington and Moses Kneeland, deceased, and Ephraim Mariner owning or claiming to own any portion or the whole of the lots described above, at any time?

(Objected to.)

A. I have a general knowledge that they owned property in that vicinity but I am unable to state whether they owned all of that, but I think they did own some part of it.

216 Q. State whether you have any general or other knowledge as to whether those parties or either of them negotiated the sale of those lots to the Milwaukee & St. Paul Railway Company.

(Objected to.)

A. I have a general knowledge that they did, directly or indirectly.

Q. You mean the defendant James Ludington, and either Moses Kneeland or his representatives and Ephraim Mariner?

A. Yes.

Q. Have you any general or other knowledge what the particular contract of purchase was with those parties by the Milwaukee & St. Paul Railway Company?

(Objected to.)

A. In what particular respect?

Q. In any respect more than you have stated.

A. I don't know of any thing peculiar in the purchase, except I un-

derstood that payment was to be made in bonds of the company in some cases.

Q. Do you know what those bonds were worth at the time?

A. I don't know that they had any stated market value. They were rated as a good real estate security.

Q. State whether you, as the general manager of the company, negotiated for the purchase of these lots from Ludington, Mariner, and Kneeland or his heirs?

217 A. I did not.

Q. Do you know or have you any general understanding as to what officer or officers or agents of the Milwaukee & St. Paul Railway Company did negotiate that purchase?

A. My impression is that it was negotiated by the president and a committee appointed for that purpose, but I have forgotten the particulars.

Q. A committee of what?

A. A committee of the board of directors.

Q. Who was president of the company at the time of this purchase?

A. Either David M. Hughes or Russell Sage, I can't state which.

Q. Was Russell Sage at that time a member of the board of directors of the St. Paul Company?

(Objected to.)

A. According to the best of my knowledge, he was.

Q. Was Alexander Mitchell at the time a member of the board of directors of the St. Paul Company?

A. According to the best of my knowledge, he was.

Q. You joined in the conveyance, did you not, of these lots?

A. I may have done so by tax title, but if I did I never received any consideration for the conveyance from the company.

Q. Did you from anybody else receive any consideration therefor; and, if so, from whom?

A. I once owned an interest in the property and conveyed it to
218 Ephraim Mariner, and if I conveyed any tax title interest to the company it was for the purpose of perfecting my title in Mariner.

Q. And if you received any consideration for that tax title conveyance, you received it from Mariner?

A. I did not receive any consideration for that subsequent to making the original conveyance.

Q. Are you sure of that?

A. Yes; I think I am sure of it.

Q. Have you any general or other knowledge in respect to the retention by the Milwaukee & St. Paul Railway Company, at the time of the sale of these lots by Mariner, Ludington, & Kneeland or his heirs, of any portion of the consideration to be paid by the St. Paul Company as security to the St. Paul Company against any outstanding tax titles upon these lots?

A. I have a general knowledge that part of the amount agreed to be paid was with'eld until titles were perfected.

Q. How much do you understand was so retained?

A. I don't know.

Q. Was it not $6,000.

A. I have no knowledge whether it was six, ten, or twenty thousand dollars.

Q. How long was it retained?

A. I am unable to say.

Q. Was it retained until these parties got up the tax titles, so far as you know?

A. I can't tell.

219 Q. Was it not the understanding, as you understood it, between the St. Paul Company and these three parties named, that they should retain that money, whatever it was, until these three parties did get up these tax titles?

NOTE.—Mr. Mariner objects to the question for the reason that it does not appear that the witness has any knowledge of any understanding or agreement between the company and these parties.

NOTE.—Mr. John W. Cary, of counsel for Milwaukee & St. Paul Railway Company, objects to the question, for the reason that the witness' understanding of an understanding is not near enough the truth to insure a probability of its being correct.

A. I have no understanding in that matter beyond what I stated in my former answer to the previous question.

Q. What did you understand the object of the retention of this money to be?

A. To secure a perfection of the titles.

Q. Who was to perfect those titles?

A. The sellers, as I understood.

Cross-examination by Mr. MARINER:

Q. From whom was that $6,000 kept back, or did you understand any sum of money was kept back at any time?

A. I don't know who. I have a general knowledge that a certain portion of the purchase money of the depot ground was kept, in order to insure a perfection of the titles. I don't know whether it

220 referred to these particular lots or not. As I always understood, the title of the depot ground property was very badly mixed up. Portions of it had been sold for dredging taxes, portions for street taxes, and the taxes had been litigated, some declared valid, others invalid, and a great many tax deeds had been taken.

Q. Wasn't all the money that was retained, retained on account of the situation of the title to a portion of the property condemned or purchased which belonged to Anson Eldred?

(Objected to on the ground that the witness has already stated that the retention of the money was on the purchase from Mariner, Ludington, and Kneeland, or his estate, and as not being cross-examination.)

A. I am unable to state. I suppose it was retained from any and all parties who were not able to give a perfect title.

Cross-examination by Mr. J. W. CARY:

Q. Have you any knowledge from whom the purchase money was retained, as you have mentioned above?

A. I have not. I have only stated what my impressions were.

Q. Were those depot grounds purchased of a great many different individuals and by different purchases? I mean the entire depot grounds.

A. They were, but I am unable to state how many different sellers there were.

221 Q. Did you have anything whatever to do with the purchase of any part of those grounds, or did it come within your province, y ou were then conducting the business?

A. I had nothing whatever to do with the purchase of the grounds braced in this suit, and it did not come within my province to have em to do with it, but subsequently I did have something to do in

purchasing additional pieces of other parties. I think I negotiated the purchase of one or two lots in one or two instances of other parties.

Redirect-examination:

Q. Have you any general or other knowledge of the retention by the St. Paul Company of money upon the contract of purchase of the lots for the depot grounds, except the retention of money upon the purchase from these three parties?

A. I have previously stated that I don't know who the money was retained from.

Q. But was it not, so far as you understood, retained on account of the purchase of the lots above described?

A. No. I have answered that too, that I understood it was retained for the purpose of guaranteeing perfection of title from all parties or any parties.

Q. Who had an interest in these lots?

A. No; who made sales to the company.

Q. Will you give us your best recollection of the number, and who the persons were that constituted the committee of the board of directors of the St. Paul Company that negotiated this purchase?

222 A. I can't tell you who they were. As I stated in my answer, my impression is that it was conducted by the president and committee. I don't know who that committee was composed of.

EDWIN H. GOODRICH.

May 16, 1872, before the examiner the parties appeared as before.

C. K. WELLS, called on behalf of the complainants, and being duly sworn, says:

223 Q. You are a lawyer by profession and have lived in Milwaukee how long?

A. Twenty-five years.

Q. You have dealt more or less in real estate since you have been here?

A. Yes.

Q. Are you acquainted with the property described in the complaint in this suit?

A. Yes.

Q. State whether you have had a tax title on any of these lots, lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, block 155.

A. Very likely at some time I have had a tax title on those; at one time I owned part of those and very likely I had tax titles, but sold them some time ago. I think previous to 1852.

Q. What I wish to know about is, as to the acquiring of any tax titles by you prior to and which were conveyed by you or by your partner Mr. Brigham, about the year 1864?

A. We had titles on block 157. Brigham and I had, and in some of the lots in block 158, lot 10. I or Daniel held that tax title, but for Daniel.

Q. None in 1855?

A. No; none recently. We held tax titles in block 157; we held

224 them for the owner, and we probably, about that time, perhaps a short time previous, conveyed those to the owner of the original title.

Q. How was it; did you in the year 1864, or about that time, or Mr.

Brigham, have any titles or pretend to convey any portions of lots 1 and 4, in block 156?

(Objected to.)

A. We had none, I think.

225 Q. State how it was as to the undivided half part, except lot 8, of block 157?

(Objected to for the reason that the writing is the best evidence.)

A. We had tax titles on 157, one or both of us, on the whole of it except lot 8.

Q. You mean by one or both of you, whom?

A. Jerome R. Brigham or myself, perhaps; Daniel Wells too also had some titles.

Q. State whether in or about the year 1864 you or your partner sold the tax title you had upon block 157?

A. A short time previous we conveyed it, perhaps it might have been a year or so. Not long previous to it we conveyed it.

Q. For whom did you hold that tax title?

A. We held an undivided half for Dan'l Wells, jr., an undivided quarter for the State Bank of Wisconsin, an undivided one-eighth for Clarke Shepardson, an undivided one-eighth for Moses Kneeland, James Ludington, and Mr. Ephraim Mariner. C. K. Wells or Jerome R. Brigham, or both of them, held the tax titles for them, and we conveyed to the parties, to them or to their order.

Q. How was it as to the bayou adjoining block 157, and thence running to the Milwaukee River?

A. That was a part of 157, and we held it in the same way.

226 Q. How was it with the undivided one-third part of lots 8, 9, 16, & 17, in block 158?

A. I think we held no tax titles on those lots.

Q. How was it as to lots 10, 12, & 13, and 14, and the east half of lot 15, of block 158, in the fourth ward?

A. We held tax titles on lot 10. When I say we had tax titles, I mean that Daniel Wells, Jerome R. Brigham, and Charles K. Wells each may have held tax titles, but they were all held for Daniel Wells; Wells & Brigham had no interest in them.

Q. That is for this lot 10?

A. Yes.

Q. Of that description that is all that you had tax titles on, is it?

A. We may have had tax titles on lot 15. Kneeland, Ludington, and Mariner owned the east half and Daniel Wells the westerly half, and we may have had tax titles on that, and if we had them we conveyed them, the east half to Mr. Kneeland or as he directed; and with regard to lot 10 we sold the tax title, the most of it, I think, to the three parties. I think Mr. Kneeland took his conveyance separate. I think Mr. Ludington took his separately, and I think Mr. Mariner, if he took any, took his separately.

227 Q. How was it, did you have tax titles on lots 9, 10, & 11, in block 3, in the 5th ward?

A. I had at one time tax titles on lots 1, 2 & 3, in block 47, in the 5th ward, for the county tax of 1853.

Q. You had none, you answer me, as to the first question, on lots 9, 10 & 11, in block 3?

A. I had none in there.

Q. Well, now, as to lots 1, 2 & 3, in block 47, in the 5th ward, did you have any tax titles on that?

A. I think I had a tax title on those for the county taxes of 1853.

Q. Did you hold that for anybody in particular?

A. I got that for myself, bought it myself, and sold it, and negotiated the sale with Mr. Moses Kneeland, to whom the deed ran. I don't recollect, but I made it according to his direction.

Q. For a consideration paid by him?

A. Yes.

Q. As to all of these other titles that you held for the benefit of the owners, you received nothing but your money?

A. No; received no money.

Q. Did you receive the money that you advanced?

A. It was generally their money that we advanced. They paid us for the trouble of attending to it.

Q. And when you came to execute deeds of those premises you conveyed either to Kneeland, Ludington, or Mariner, or to such parties as they designated?

228 A. Yes; probably such a person as Mr. Moses Kneeland designated; I think he generally attended to the matter entirely.

Q. Did you ever sell any of those tax titles to the Milwaukee & St. Paul Railway Company?

A. I and Daniel Wells executed, in 1864, a quitclaim deed of the depot grounds, and we received a consideration only for specific lots.

Q. What I want to know is about these lots that I ask you about, whether you ever sold any of the tax titles that you had on those to the St. Paul Railway Company?

A. If a sale means executing a conveyance, I say we may have done it, but we never made any bargain for a sale to the St. Paul Company.

Q. Did the St. Paul Company ever pay you anything for the title?

A. No; they paid nothing.

(The counsel for James Ludington offers in evidence a paper purporting to be a release from the La Crosse & Milwaukee R. R. Company to James Ludington, dated May 24, 1859.

Objected to by complainants' counsel, first, because not executed by the La Crosse & Milwaukee Railroad Company, no seal of the company is affixed in the manner required by law, the officers purporting to have executed the same had no authority to execute it; second, if they had, it is

229 void; third, it does not appear that said William Platt and E. P. Whaling were officers of the said La Crosse & Milwaukee Railroad Co., nor that what purports to be their signatures are their signatures, or whether this paper is a copy or an original instrument.)

CHARLES K. WELLS.

Said paper, purporting to be a release, &c., is marked by the examiner Exhibit 1ª, def't Ludington's testimony.

Also papers purporting to be resolutions of the board of directors of the L. C. and M. R. R. Co., passed May 24th, 1859, are introduced in evidence in behalf of the def't, Ludington, and are marked Exhibit 2ª and 3ª.

May 21, 1872. Same appearance. Ex'm'n of C. D. NASH resumed.

230 Deposition of Mr. Nash read over to him as far as taken.

Recross-examination by Mr. MARINER:

Q. At the end of the memorandum between you and Mr. Kneeland, dated Sept'b'r 24, 1855, is a memorandum of bonds; what bonds were those?

A. I have no recollection.

Q. Are they not a memorandum of the numbers of certain farm mortgages & bonds of the La Crosse R. R. Co. which were delivered to you by Mr. Kneeland on that day to reimbourse you for the bonds which you had paid to the La Crosse R. R. Co. upon your purchase?

A. I don't remember anything definite about them.

Q. Did you have any other transaction in respect to this property with Mr. Kneeland in which any bonds were paid or received by you, except what you paid to the company for the lots and what you received when you conveyed them, that you can remember?

A. Nothing that I can remember.

231 Q. Did you not pay to the La Crosse & Milwaukee R. R. Co. bonds numbers 274, 400, 486, 494, 495, 496, 577, 588, and 589, in all $10,000, for these lots?

A. I don't remember just how the payments were made.

Q. Did you not make the payment in farm mortgage bonds at the time you purchased the property?

A. I can't remember whether I made it at the time or at a subsequent time; I haven't the remotest recollection as to the exact date.

Q. At the time that you made this purchase, did you make it entirely for other parties, or in part for yourself and others?

A. I think I was to have had an interest if I elected to take an interest in the purchase, but I did not elect to take such interest.

Q. You were dealing in real estate some then, were you not?

A. I think I was.

Q. Do you remember whether or not you regarded this as a very advantageous purchase?

(Objected to as incompetent.)

A. My impression is that if I had regarded it as a very advantageous purchase, I should have taken the interest in it.

Q. You were at that time able to have bought the property and pay for it readily?

A. I was able to carry out any undertaking that I assumed in respect to it.

Q. At that time, were you making that kind of investments; were you buying real estate?

A. I think I was.

232 Redirect examination:

In 1869, when I was exam'd in this matter before, I took considerable pains to refresh my recollection by examining papers and records. Since that time I have not charged my mind with the facts. My exam'n in 1869 gives my best recollection at that time in regard to these matters.

Q. Is it not true that one principal reason why you did not elect to take any interest in that purchase was that you were afraid the transaction of the purchase made by you, as you have stated, might not stand the test of the law, and you, therefore, preferred to have nothing to do with it?

A. I don't think that that was the reason.

Recross-exam'n:

Q. What does this memorandum of bonds at the foot of this paper of Sept'b'r 24, 1855, refer to, if it is not a memorandum of bonds delivered to you by Mr. Kneeland?

A. I cannot say.

Q. Did you have any other transaction in respect to this property with

Mr. Kneeland in which any bonds were paid or received by you except to reimburse you for what you paid to the company for the lots?

A. Not that I remember.

233 Q. How or for what other purpose could Mr. Kneeland have been bound to pay you bonds than to make you whole for your disbursements? Did he pay you any profit on the transaction?

A. There was no other purpose for which he could have put any other bonds in my hands except to reimburse me for what I had paid out. I know I made no profit in the transaction.

Redirect examination:

Q. State whether the bonds and stock with which you made the purchase above stated were put into your hands before making the purchase or afterwards.

A. I cannot state positively, but think subsequent to making the purchase.

C. D. NASH.

LAWRENCE G. GRAHAM sworn for complainant'.

Q. Are you one of the compl'ts in this suit?

A. I am.

Q. Against what corporation did the indebtedness upon which this bill is filed originally accrue?

A. The contract out of which this indebtedness grew out of was made with the Milwaukee & Watertown R. R. Co. in 1855 for the building of their road from Watertown to Columbus.

Q. Was that contract in writing?

A. It was.

Q. Have you the contract in your possession now?

A. I have.

234 (Contract produced.)

Q. Have you prepared a copy of this contract?

A. I have.

(Copy produced.)

Q. Who executed this contract on behalf of yourself and Scott?

A. Donald D. Scott.

Q. Were you present at the time of the execution?

A. I was not.

Q. Who was Alexander Graham?

A. He was my brother.

Q. He is now dead, is he not?

A. Yes, sir.

Q. State whether he was ever interested in this contract in fact.

(Objected to.)

A. He never was.

Q. How came his name to be put in there as one of the contracting parties?

(All testimony in regard to that is taken under objection.)

A. It was put in by Mr. Scott, without anything being said to him about it.

Q. You were not present, you say, when that contract was executed?

A. No, sir.

Q. He never afterwards, as I understand you, had any interest in this contract?

A. No, sir.

(NOTE.—Contract, bearing date July 5th, 1855, purporting to be exe-

cuted by the Milwaukee & Watertown Railroad and Alexander Graham, Lawrence G. Graham, and Donald D. Scott, of the other part, is now offered in evidence, and hereto annexed, marked Exhibit .)

(Objected to.)

Q. State whether there was any retention from month to month by the Milwaukee & Watertown Railroad Company of any portion, and, if so, how much, of the amount due you for work under this contract.

(Objected to.)

A. There was fifteen per cent. retained monthly until the completion of the work.

Q. When did you commence doing that job of work?

A. In July, 1855.

235 Q. How came the La Crosse & Milwaukee Railroad Company to become liable to you for the amount of this work?

(Objected to.)

A. Under a consolidation of both companies.

Q. What year was that in?

A. In 1856, I believe.

Q. State whether the amount of the judgment set forth in the bill of complaint in this case remains wholly unpaid to you to-day.

A. Yes, sir.

Cross-examination:

Q. When was the work completed under that contract?

A. It was in the fall of 1857 or spring of 1858, I could not be certain which until I look at my papers.

Q. Was it ever entirely completed?

A. I think there was a portion of the ballasting not done.

Q. When was the road completed to Columbus?

A. I think it was in 1857 it was open to Columbus—that the track was laid.

Redirect examination:

Q. After the consolidation of the Milwaukee and Watertown Road with the La Crosse & Milwaukee Railroad, did you continue at work under this contract for the La Crosse & Milwaukee Railroad Company?

A. Yes, sir.

236 Q. Does the 15 per cent. which you say was retained from month to month by the Milwaukee & Watertown Road, in the first instance, by the La Crosse & Milwaukee Railroad Company, after the consolidation, form a part of the consideration upon which the judgment referred to in the complaint in this case was recovered?

(Objected to as leading.)

A. It does.

Q. State whether after that consolidation the La Crosse & Milwaukee Railroad retained the 15 per cent. on the monthly estimates referred to in the contract, the same as the Milwaukee and Watertown Road had done before.

(Objected to as leading.)

A. They did.

Q. State whether after that consolidation the La Crosse & Milwaukee Railroad took and performed covenants in this contract to be performed by the Milwaukee and Watertown Road.

(Objected to as leading.)

A. They did assume the contract.

Q. When did the La Crosse & Milwaukee Road, through its officers,

so far as you know, first obtain knowledge of the existence of this contract?

A. I presume at the time of the consolidation. I know they obtained knowledge then.

Q. You don't know but what they had knowledge before, do you?

A. I think they had before.

Recross-examination:

Q. Where did that consolidation take place?

237 A. I don't know exactly where it took place. I think either in Milwaukee or Madison. I think it was talked of probably at Madison.

Q. Were you present when it took place?

A. No, sir; I was not.

Q. How, then, do you know that the officers of the La Crosse Company had knowledge of your contract at the time the consolidation took place?

A. I was so notified by the officers, that they assumed the contract, and I immediately dealt with them afterwards in regard to that contract.

Q. Where were you when you received that notice?

A. I think I first heard it in the office of the La Crosse & Milwaukee Railroad Company in this city.

Q. Who told you; from whom did you get the notice; what person?

A. The board was in session there, I think, that day, and I was called into the room and was notified that I had to deal with them for the future.

MURPHY. Q. In the presence of the board, you mean?

A. Yes; in the presence of the board.

MARINER. Q. Is that all you know about it?

A. Yes, sir; that is the principal thing I know about it.

Q. Now, what makes you say that you know that the officers of the La Crosse Company had notice of your contract at the time of the consolidation?

A. From the fact that they told me, and that I received my pay from them monthly afterwards.

238 Q. Then you don't know anything about it; you only conclude.

A. I was not present at the meeting.

Q. So that when you said that you know that the officers knew about it at the time of the consolidation, you were a little fast, weren't you?

MURPHY. I should think he was.

A. I don't think I was.

Q. Do you say now that you know that the officers of the La Crosse Railroad Company knew of your contract with the Watertown Company at the time of the consolidation?

A. I say that the officers of the Milwaukee & Watertown Company told me that the La Crosse Company had assumed my contract, and that it had consolidated.

Q. Question repeated.

A. That is my belief.

Q. That is not any answer to my question. The question is, do you say now that you know that the officers of the La Crosse Company knew of your contract at the time of the consolidation?

A. I believe so.

MURPHY. If you don't know, Mr. Graham, you can state so.

MARINER. I object to Mr. Murphy interrupting.

MURPHY. I object to Mr. Mariner's objection.

EXAMINER. It comes back to the requirement on the part of the defendants' counsel that the examiner require the witness to answer the question; and the examiner does direct the witness to give a pertinent answer to that question; the question being whether the witness knows that the officers of the La Crosse Railroad Company knew of his contract at the time of the consolidation?

239 A. I only know from the fact that they told me that they assumed my contract.

MURPHY. Who told you?

A. The officers of the La Crosse & Milwaukee Railroad Company, and they dealt with me afterwards.

Redirect exam'n:

Q. Did I understand you right when I understood you to say that you were called into the room where the board of directors of the La Crosse & Milwaukee Railroad Company were in session about the time of this consolidation, and then notified in their presence of this consolidation, and that the La Crosse Company would thereafter assume the obligations of the Milwaukee & Watertown Road under this contract?

A. I was.

Q. I understood you right, then, did I?

A. Yes.

MURPHY. I now offer to call Mr. Mariner, who is present in the room, for further direct and cross examination, and offer to pay him his fees if he demands them, but ask that he shall be again called as a witness in behalf of the complainant and for cross-examination.

MARINER. I have not been subpœn'ed as a witness for the complainant in this case, and have not been notified to attend here to be examined as a witness for the complainant, and I am not here for that purpose; and the other attorneys in the case have not been notified, and I am here in the city, and am ready to come down here at any time to be examined upon notice.

240 At the request of E. Mariner, of counsel, the taking of the deposition was held open until to-morrow morning, May 22, 1872, at 10 a. m.

May 22.—Examiner in attendance. No appearance by either party.

JUNE 8, 1872.—Examination resumed in pursuance of notice and order. Complainants in attendance. No appearance by defendants. On complainants' motion, adj'd to June 10, at 2 p. m.

JUNE 10.—Compl'ts in attendance. No appearance by defendants.

JUNE 17, 1872, 9 a. m.—Examination resumed pursuant to order and notice. Complainants in attendance by N. S. Murphy, of counsel; defendant Ludington by E. Mariner of counsel, and defendant The Milwaukee & St. Paul Railway Company by John W. Cary as counsel.

B. K. MILLER, being sworn for complainant, testified:

I am a member of the bar, and of the law firm of Finches, Lynde & Miller, and was in 1859.

Q. Were your firm employed to foreclose a mortgage in 1858 on certain lots in the city of Milwaukee, for the Bridgeport Saving Bank of Conn., for about $4,000, and did you foreclose such mortgage?

A. We were so employed, and we did foreclose the mortgage for the Bridgeport Savings Bank.

Q. Did you have any correspondence in regard to that business during the year 1858 and up to and including 1860; and, if so,
241 have you the letters now written to you by the Bridgeport Saving Bank, or its agent, and copies of your answers thereto?

A. We did have such correspondence, and we have the original letters received, and the copies of those we sent, as it is our habit to preserve all such correspondence.

Q. Who was the agent or officer of the Bridgeport Bank that you corresponded with?

A. My recollection is that it was the most with Mr. Sterling, who was an officer of the bank—treasurer, I think. That is, all our correspondence was with him, as I remember of.

Q. Which member of the firm of Finches, Lynde & Miller wrote the letters to Sterling?

A. I think I wrote them all.

Q. Have you any information as to whether Mr. Sterling is now living or not?

A. I have not.

Q. How many letters, should you think, did you receive and write, at a rough estimate, in regard to this matter?

A. Oh, I can't tell you.

Q. Quite a number?

A. Yes, sir; quite a number; I can't tell without examining our letter-books.

Q. Who was the plaintiff in that suit, and in what court was it pending?

A. The Bridgeport Saving Bank was the plaintiff; it was in the circuit court of Milwaukee County.

242 Q. Do you remember who paid you for foreclosing that mortgage; who paid your firm?

A. Well, I don't know.

Q. Would your books show?

A. Our books would show; yes, sir, undoubtedly.

Q. I wish you would examine your books about that and let us know.

A. I will.

Q. Have you examined, since you were subpœn'ed in this case, your correspondence in regard to this matter?

A. I have read over two or three of the letters that I wrote; but I have not examined the whole correspondence.

Q. Did you examine to see whether you had a letter from the Bridgeport Bank in regard to this matter, bearing date about February, 1860?

A. I did not.

Q. Did you examine to ascertain whether you had written a letter to them about that date?

A. I don't remember the date of the letters that I looked at this morning; I did not impress it upon my mind; it was just from my own curiosity that I looked at them.

Q. The subpœna directed you to bring with you the correspondence in that matter.

A. It did, to bring certain letters; I did not know whether it was the particular letters named in the subpœna, or the whole correspondence.

Q. Have you got that correspondence here before the commissioner?

A. I have not; those were letters received from and written to a client

on his business, and as I understand they are privileged letters
243 and privileged correspondence, I must decline to produce them.

Q. Will you produce now to the commissioner for inspection, and for the purpose of his making and attaching copies thereof to your testimony, the original letters received by your firm from the Bridgeport Saving Bank, and copies of the letters written by you in answer thereto, from and including 1858 up to and including 1860, relating to the foreclosure of that mortgage?

A. I will not, for the reasons above mentioned.

Q. Is it not your recollection that Finches, Lynde & Miller were paid for foreclosing that mortgage by Messrs. Ephraim Mariner, Moses Kneeland, and James Ludington, or one of them?

A. I don't remember.

Q. Were your firm of Finches, Lynde & Miller, in 1864, attorneys for the Milwaukee & St. Paul Railway Company?

A. Attorneys, perhaps, in some cases; but I don't remember at that time whether we were their general attorneys; in fact, I don't know that we were ever their general attorneys.

Q. What was the extent of your professional relations toward that company?

A. We were retained as counsel and as attorneys in any cases or in any matters they put in our hands; we had a general retainer from them which is no longer in existence.

Q. Are you acquainted with the property described in the bill of complaint as just read to you; do you know its location and where it is in the city of Milwaukee?

A. Yes; I know where it is.

244 Q. Did you know about the time of the purchase by the Milwaukee & St. P. Railway Company in 1854 of this property?

A. I don't remember the property by the description. Abstracts of title were furnished me by the St. Paul road of a large amount of property, which I examined and gave the opinion of our firm as to the titles.

Q. Founded on that abstract?

A. Based on the abstract, but I don't know from the description that this property is any of the property that I then examined.

Q. What is your belief about it?

A. I think it is. I suppose it is so, but I don't remember. I don't take it from my own recollection.

Q. In what year was that?

A. I don't remember. I think it was 1864, but I am not certain.

Q. This case is the case of Lawrence G. Graham and Donald D. Scott against James Ludington, La Cross & Milwaukee Railroad Company and others, being a bill of equity filed in the United States district court for Wisconsin in 1860, and since that time and now pending, as the record shows. When did you first know of the pendency of that suit according to your present best recollection?

A. Well, I don't remember. It has been pending some fifteen
245 or sixteen years, hasn't it? I heard of the litigation ever since it was commenced.

Q. At the time of the purchase of these lots by the Milwaukee & St. Paul Railroad Company, you knew at the time of the existences of the pendency of this suit, did you not?

A. It is so long ago that I can't now remember, but in examining the title to these lots we examined merely from the abstracts that were furnished us and not from personal knowledge.

Q. And your opinion in regard to the title, I understand you, was not only predicated upon but stated to be predicated upon the abstract?

A. They were based entirely upon the abstract.

Q. But as a matter of fact, you did know, did you not, at that time and for a long time previous to that of the pendency of this litigation?

A. I can't say now, for I haven't the dates before me as to that.

Q. Well, premising that this bill was filed in 1860, and that the sale to the Milwaukee & St. Paul Railway Company was in 1864, how would it be then; would you not say that you know, as a matter of fact, of the existence of this litigation?

A. I can't now say.

Q. Who in behalf of the St. Paul Company were the active agents or officers in negotiating this purchase?

A. I don't know.

246 Q. Do you not know of the officers or agents, or how it was done or who it was done by?

A. I don't.

Q. Who solicited your opinion on the subject in behalf of the company?

A. We were directed to write our opinion as to each title and annex it to the abstract and send it to Mr. Mitchell.

Q. Alexander Mitchell?

A. Yes, Alexander Mitchell. I think he was then a director of the company. I presume he was. We had nothing to do with the getting up of the abstract or the purchase of the property or the negotiating or the paying for it in any way, shape, or manner. All that we had to do with it was to examine the abstracts and send them to Mr. Mitchell.

Q. You did not even procure the abstracts?

A. No, sir.

Q. You were simply asked for your opinion of the state of the title predicated upon the abstracts furnished you by the company?

A. Yes, sir; and in many instances drew the conveyances.

Q. Who requested you to do that in behalf of the company; Mr. Mitchell?

A. Dave Ogden, I think. Dave Ogden brought the abstract to me in every case except one, and that was brought by Mr. Shephardson.

247 I think one of Graham's. I think Dave Ogden brought all the abstracts to me except that one.

Q. He didn't ask you to examine them and give a written opinion to Mr. Mitchell, did he? Who asked you to do that?

A. I think that Mr. Asahel Finch instructed me to do it, and that Mr. Ogden brought me the abstracts. I don't think I ever had any conversation with any member of the St. Paul Company on the subject, except in one or two instances I went to explain to Mr. Mitchell personally the opinion.

Q. Was this request to your firm to examine these abstracts and report your opinion made in writing?

A. Not that I know of. Not that I recollect. It is a good many years ago.

Q. Was the opinion that you gave given in writing?

A. Yes, sir; and annexed to each abstract.

Q. How many abstracts were there?

A. There must have been a dozen.

Q. Did you retain copies of the opinions which you gave at that time, and the letters?

A. We kept copies of the opinions but not of the abstracts.

Q. The opinions which you gave and the correspondence which you

on his business, and as I understand they are privileged letters
243 and privileged correspondence, I must decline to produce them.

Q. Will you produce now to the commissioner for inspection, and for the purpose of his making and attaching copies thereof to your testimony, the original letters received by your firm from the Bridgeport Saving Bank, and copies of the letters written by you in answer thereto, from and including 1858 up to and including 1860, relating to the foreclosure of that mortgage?

A. I will not, for the reasons above mentioned.

Q. Is it not your recollection that Finches, Lynde & Miller were paid for foreclosing that mortgage by Messrs. Ephraim Mariner, Moses Kneeland, and James Ludington, or one of them?

A. I don't remember.

Q. Were your firm of Finches, Lynde & Miller, in 1864, attorneys for the Milwaukee & St. Paul Railway Company?

A. Attorneys, perhaps, in some cases; but I don't remember at that time whether we were their general attorneys; in fact, I don't know that we were ever their general attorneys.

Q. What was the extent of your professional relations toward that company?

A. We were retained as counsel and as attorneys in any cases or in any matters they put in our hands; we had a general retainer from them which is no longer in existence.

Q. Are you acquainted with the property described in the bill of complaint as just read to you; do you know its location and where it is in the city of Milwaukee?

A. Yes; I know where it is.

244 Q. Did you know about the time of the purchase by the Milwaukee & St. P. Railway Company in 1854 of this property?

A. I don't remember the property by the description. Abstracts of title were furnished me by the St. Paul road of a large amount of property, which I examined and gave the opinion of our firm as to the titles.

Q. Founded on that abstract?

A. Based on the abstract, but I don't know from the description that this property is any of the property that I then examined.

Q. What is your belief about it?

A. I think it is. I suppose it is so, but I don't remember. I don't take it from my own recollection.

Q. In what year was that?

A. I don't remember. I think it was 1864, but I am not certain.

Q. This case is the case of Lawrence G. Graham and Donald D. Scott against James Ludington, La Cross & Milwaukee Railroad Company and others, being a bill of equity filed in the United States district court for Wisconsin in 1860, and since that time and now pending, as the record shows. When did you first know of the pendency of that suit according to your present best recollection?

A. Well, I don't remember. It has been pending some fifteen
245 or sixteen years, hasn't it? I heard of the litigation ever since it was commenced.

Q. At the time of the purchase of these lots by the Milwaukee & St. Paul Railroad Company, you knew at the time of the existences of the pendency of this suit, did you not?

A. It is so long ago that I can't now remember, but in examining the title to these lots we examined merely from the abstracts that were furnished us and not from personal knowledge.

Q. And your opinion in regard to the title, I understand you, was not only predicated upon but stated to be predicated upon the abstract?

A. They were based entirely upon the abstract.

Q. But as a matter of fact, you did know, did you not, at that time and for a long time previous to that of the pendency of this litigation?

A. I can't say now, for I haven't the dates before me as to that.

Q. Well, premising that this bill was filed in 1860, and that the sale to the Milwaukee & St. Paul Railway Company was in 1864, how would it be then; would you not say that you know, as a matter of fact, of the existence of this litigation?

A. I can't now say.

Q. Who in behalf of the St. Paul Company were the active agents or officers in negotiating this purchase?

A. I don't know.

246 Q. Do you not know of the officers or agents, or how it was done or who it was done by?

A. I don't.

Q. Who solicited your opinion on the subject in behalf of the company?

A. We were directed to write our opinion as to each title and annex it to the abstract and send it to Mr. Mitchell.

Q. Alexander Mitchell?

A. Yes, Alexander Mitchell. I think he was then a director of the company. I presume he was. We had nothing to do with the getting up of the abstract or the purchase of the property or the negotiating or the paying for it in any way, shape, or manner. All that we had to do with it was to examine the abstracts and send them to Mr. Mitchell.

Q. You did not even procure the abstracts?

A. No, sir.

Q. You were simply asked for your opinion of the state of the title predicated upon the abstracts furnished you by the company?

A. Yes, sir; and in many instances drew the conveyances.

Q. Who requested you to do that in behalf of the company; Mr. Mitchell?

A. Dave Ogden, I think. Dave Ogden brought the abstract to me in every case except one, and that was brought by Mr. Shephardson.

247 I think one of Graham's. I think Dave Ogden brought all the abstracts to me except that one.

Q. He didn't ask you to examine them and give a written opinion to Mr. Mitchell, did he? Who asked you to do that?

A. I think that Mr. Asahel Finch instructed me to do it, and that Mr. Ogden brought me the abstracts. I don't think I ever had any conversation with any member of the St. Paul Company on the subject, except in one or two instances I went to explain to Mr. Mitchell personally the opinion.

Q. Was this request to your firm to examine these abstracts and report your opinion made in writing?

A. Not that I know of. Not that I recollect. It is a good many years ago.

Q. Was the opinion that you gave given in writing?

A. Yes, sir; and annexed to each abstract.

Q. How many abstracts were there?

A. There must have been a dozen.

Q. Did you retain copies of the opinions which you gave at that time, and the letters?

A. We kept copies of the opinions but not of the abstracts.

Q. The opinions which you gave and the correspondence which you

had with the St. Paul Company in regard to this matter, I understand you, was conducted exclusively with Mr. Alexander Mitchell?

A. It was.

Q. Did you have any correspondence with Mr. Mitchell other, pending those negotiations, than the mere written opinion which you finally
248 gave him as attached to each abstract, in regard to the matter?

A. No, sir, because if I wanted anything of the kind I should have stepped down to his office and seen him. I take it for granted not. I have no recollection of it. There may have been letters written to Mr. Mitchell explaining our modification of the opinion for the reason that some cloud on the title had been cleared up after the giving of the opinion.

Q. Where are the copies of these several opinions which you gave to Mr. Mitchell now?

A. In the letter books of Finches, Lynde & Miller.

Q. Will you produce to the commissioner those copies, for the purpose of inspection by him and that he may make and attach copies of them to your examination as testimony in this case?

A. No, sir.

Q. Why?

A. For the reason that they were opinions given to a client.

Deposition of R. K. Miller suspended.

EPHRAIM MARINER recalled on behalf of complainant.

Q. I find upon examining the records that on the 18th day of November, 1857, Mr. Edwin H. Goodrich and wife conveyed to you by quit-claim, for a consideration in blank, an undivided one-third of the
249 property described in the complaint in this action. What did you pay for that? What was the consideration?

(Objected to.)

A. I think in the neighborhood of $18,000, but I have forgotten.

Q. How was it paid?

A. It was paid part in farm mortgage bonds, I think a part in an indebtedness from Mr. Goodrich to me, in part in other real estate, and in part in my bond to him.

Q. What was then the actual value of that one-third that you took the title to?

A. It was probably then at that time worth $24,000. It hadn't any marketable value at the time. There had been at that time quite an amount spent in improving the property—quite a large amount, but $24,000 for a third would have been a large price.

Q. Was it worth more or less then than it was in July, 1864?

A. It was worth more. That is, it was nominally worth more than it was in July, 1864, but as an actual fact it was really worth less; that is, to make it plain, after the middle of September, 1857, the prices of property in the city of Milwaukee were very much higher than they were in 1864, but it was almost entirely u'saleable. In 1864 it was more saleable; the nominal prices were very much less, but property for
250 the purpose of getting an income from it was worth more at that time than in 1857.

Q. Why was the consideration not written in that deed at the time it was given?

A. I think it was a mistake of mine, and it occurred in this way, I think. I was not aware until you mentioned the fact that the consideration was not expressed in that deed. I know that the consideration in the deed that I gave to Mr. Goodrich at the time was not expressed.

The deeds were drawn by Mr. Bosworth, my clerk; that is, the first deed was drawn by Mr. Bosworth, my clerk, and I presume he did not know what consideration to put in it, and when they were delivered the consideration was not inserted.

Q. What do you mean by speaking of the deed from you to Goodrich?

A. I gave him a conveyance of property as a part consideration for this purchase, and I was subsequently called upon to correct that deed in that respect and did make a quitclaim deed for that purpose.

Q. In your former examination in this matter I understood you to say that you in the first place deeded a one-sixth interest to Goodrich in this property and afterwards all the other one-sixth, making two sixths or one-third. What I wish to know, Mr. Mariner, is this, whether there was ever more than one conveyance of this one-third interest by Goodrich to you.

251 A. I don't remember having testified about it in a former examination, and I am not sure now as to the fact whether there was one or more conveyances.

Q. I observe that the deed from the record of Goodrich and wife to yourself of this one-third interest, executed in November, 1857, was not recorded until August 5, 1864. Now, was that not recorded about the time of the sale to the St. Paul Company of your interest, and was it not recorded for the purpose of perfecting the claim of title from you to the St. Paul Company?

A. No.

Q. What was it recorded for?

A. To perfect the title in me of record.

Q. Did you then claim or do you now claim that you then had title to that third interest under or by any other conveyance than the one from Goodrich and wife to you in November 18, 1857?

A. No; I did not claim that I claimed title by any other title than the title from Mr. Goodrich.

Q. Is it not true, Mr. Mariner, on reflection, that your present best recollection is that you never took but one conveyance from Goodrich of this one-third interest, and that that was this conveyance of November 18, 1857?

A. No; I don't know that that is my recollection.

Q. Have you any different recollection about it? Have you a recollection of any other conveyances from Goodrich to you?

252 A. No; I can't say that I have a positive recollection. I haven't any recollection of the execution of this deed for one-third, and I would not be sure now that there was such a deed.

Q. I ask you if you have any recollection now of any other conveyances from Goodrich to you?

A. Well, that implies that I have a recollection of this. I say that I have not any positive recollection of any other, and I have not any recollection of this.

Q. If you bought one-half of this third from Mr. Goodrich at one time and the other half at another time—I understood you a moment ago to say that the first one-half might have been contracted for by parole and not really conveyed till the whole was subsequently conveyed to you until you bought the other half. Did I understand you right?

A. I said that might have been conveyed and might not. I bought the whole of this property before that deed of November was executed at all, and I bought it at two different times. Now whether I took the

first time a conveyance before this I can't be positive. I had expended a large amount of money on that property before the date of that deed. I bought it and paid for it, with the exception of the deed that I gave and the transferring of the title of the real estate, before the date of the deed.

Q. You stated before in your examination that you had been formerly a party defendant herein.

A. Yes, sir.

253 Q. And that you put in the answer?

A. Yes.

Q. By way of refreshing your recollection, I wish to ask, do you remember of stating in that answer, among other things, that before you bought the one-sixth or the half of that third that you had read the bill of complaint filed in the district court of the United States for the district of Wisconsin by Newcomb Cleveland, against the La Crosse & Milwaukee Railway Company & others?

A. No; I don't remember. I haven't read that answer in ten years, I think. I can't remember what I stated then.

Q. Do you remember now whether you ever read that bill?

A. That bill of Newcomb Cleveland?

Q. Yes.

A. I presume I have read it a dozen times, but I haven't any recollection now of having read it—of the time of reading it.

Q. Do you remember the general facts alleged in the bill?

A. I think I do.

Q. Were they not substantially the same, among other things, as those alleged in the bill of complaint in this case?

A. Well, I don't think that I have read the bill of complaint in this case in ten years, and I haven't read the bill of complaint of Newcomb Cleveland in thirteen years, probably, and to compare the two—that is, upon my recollection—I can't, but from what I know is the

254 object of each of the bills and that Mr. Carpenter drew them both, I presume they are nearly alike in respect to the allegations in regard to this property.

Q. The other bill was directed against this same property, was it not?

A. Yes, among other things.

Q. Seeking to reach it for the same general causes?

A. Yes.

Q. Now, I understand you to say that you don't remember to have stated in your answer originally put in for yourself by yourself in this case, that before you purchased one-half of this third you had read that Newcomb Cleveland bill. You don't remember to have stated that?

A. No, sir.

Q. It is so long ago?

A. Yes.

Q. If you should find it so stated in the bill, in your own handwriting, would you have any doubts about its being the fact?

(Objected to.)

A. No, sir; I should presume it was right if I should find it so stated.

Q. If, then, there has been no other conveyance, as a matter of fact, of this third interest to you than the deed from Goodrich of November 18, 1857, and it is true you had read that bill before purchasing this one-sixth interest, then would it not be also true that you had notice of all

255 the facts in that Cleveland bill before you took any conveyance of any portion of the third?

(Objected to.)

A. Well, I think it would, on that hypothesis.

Q. At the time you bought the interest of Goodrich there was a mortgage outstanding, was there not, on some portion of the land you bought?

A. Two mortgages.

Q. I am inquiring now about the one for about $4,000 originally given by the Fond du Lac & Green Bay Railroad Company to Edward D. Holton.

A. Yes, sir.

Q. You bought subject to that mortgage, did you not?

A. Yes, sir; that is, I bought with the mortgage upon the land.

Q. Did you agree to pay the mortgage or your part of the mortgage?

A. I think not, but I can't tell after this lapse of time.

Q. Did your grantor agree to pay it at that time?

A. I, of course, don't know anything about it, but I presume not.

Q. Did you ever afterwards, directly or indirectly, pay that mortgage or any part of it?

A. No, sir.

Q. Are you sure of that, Mr. Mariner?

A. Yes, sir.

Q. Did you ever afterwards, directly or indirectly, pay or secure to be paid the debt or the amount, or about the amount secured by
256 that mortgage?

(Objected to.)

A. I subsequently paid one-third of an amount that was the amount of that mortgage and the costs of foreclosing it—perhaps a little more; I don't know, but I think just the amount of that mortgage and the amount of foreclosing it.

Q. Then are you not mistaken in saying that you never, directly or indirectly, paid any portion of it?

A. No, sir.

Q. Why did you subsequently make this payment?

A. Because I agreed to.

Q. Who paid the balance?

A. The balance of what?

Q. The other two-thirds.

A. Of what?

Q. Of the amount that you say you paid?

A. Moses Kneeland and James Ludington.

Q. When did you make that payment?

A. When it matured, I think, according to the terms of our security.

Q. This mortgage was held by the Bridgeport Saving' Bank in 1858, was it not?

A. Yes, sir: about that time, I should think.

Q. And was foreclosed by them?

A. Yes.

Q. And bid in by it?

A. Or Mr. Sterling, I don't know which.

Q. And the bank conveyed to you, Moses Kneeland, and James Ludington, did it not?

257 A. Yes, sir; the bank or Mr. Sterling.

Q. The consideration, I understand from what you say, for that conveyance by the bank to you three parties, was the amount due on this mortgage and the costs of foreclosing it?—A. I think it was that. It was the amount of the judgment in that case, as I recollect it—about that amount.

Q. To whom did you three parties make that payment?

A. I can't tell now. My impression is that we paid a part of it to Finches, Lynde & Miller.

Q. In the shape of fees, costs of foreclosure?

A. No, sir. We did not pay it in any such shape.

Q. What did you pay them for?

A. We paid Finches, Lynde & Miller upon receiving a conveyance of the property, I think, and I am not sure that we did not pay it all to Finches, Lynde & Miller, but I think not. I think we paid a part of it through a bank and perhaps a part of it to James Kneeland.

Q. Is it not true that you at once gave a mortgage on the property included in this original mortgage or upon that with other property executed by yourself, Moses Kneeland, and James Ludington to secure the payment of the amount due on that judgment?

A. I can't speak positively as to dates nor as to who executed the securities, but this is true, that within no great length of time
258 after the confirmation of the sale to the Bridgeport Savings Bank that we bought the property of the bank and paid for it substantially the amount of the judgement of foreclosure and sale, and my impression is that they gave us time on it, but how long a time or what rate of interest I can't now tell. I haven't had this matter in mind since I conveyed to the St. Paul Company.

Q. Was it not understood between yourself, Kneeland, Ludington, and Finches, Lynde & Miller, attorneys for the Bridgeport Bank, before the confirmation of that sale, that that sale should be completed and confirmed, and that they should convey this property to you three men for the amount due, principal, interest and costs?

(Objected to.)

A. No. At that time the property could not have been sold in the city of Milwaukee for that sum.

(Mr. Murphy, the counsel for complainant, objects to all the above answer except the word "No," as not being responsive to the question.)

Q. Did you, Kneeland, and Ludington not go into the office together of Finches, Lynde & Miller, pending this foreclosure suit, and make the arrangement, just alluded to in my last question, with them for the completion of this foreclosure, confirmation of the sale and the conveyance to you for the amount due upon the judgment?

A. No.

Q. Were you ever there together—you three parties—on this
259 business?

A. I think not.

Q. Are you sure about it?

A. I feel reasonably sure about it; I don't remember that we three were ever in their office; I have no sort of recollection of ever being in Finches, Lynde & Miller's office with Ludington and Kneeland.

Q. Did you ever have any negotiations, or were there ever any between you three parties, or either of you and the Bridgeport Bank, or their attorneys, in regard to their conveying to you the title acquired upon this foreclosure sale for the amount due upon the judgment at any time; and, if so, when?

A. I talked with Mr. Sterling about this matter when the mortgage matured.

On the questions being repeated to the witness, he says:

A. I can't say that I did talk with Mr. Sterling about that matter; I thought the question was broader.

Q. What mortgage?

A. The mortgage to Holton.
Q. Can you about fix that date?
A. No, I can't.
Q. Before the suit was commenced?
A. Yes, probably; I have a sort of an impression that I recommended them to Finches, Lynde & Miller to foreclose the mortgage, but I ain't sure.
Q. Well, sir, what did you talk to Mr. Sterling about?
A. I talked with Mr. Sterling a great many times—quite a number of times in my life.
260 Q. Did you ever have a talk with Mr. Sterling or Finches, Lynde & Miller in regard to having said mortgage foreclosed, the sale under the foreclosure, and a conveyance by the purchaser or the bank to you three parties for the amount due upon the judgment? And, if so, state when that was.
A. I never had any conversation with Mr. Sterling that included all those subjects.
Q. Did you ever have a conversation with Mr. Sterling in regard to the conveyance of the title acquired on that foreclosure to yourself, Kneeland, and Ludington; and, if so, when was it?
A. It is my impression that I did not, but I can't be sure.
Q. Then how came the bank to convey to you if you never had any conversation with them about it?
A. My recollection is that Mr. Miller, of Finches, Lynde & Miller, requested us to take the property.
Q. At what time was that?
A. That was about the time of the sale; it may have been directly, and it may have been within a month or two.
Q. Which side of the sale, before or after?
A. After, I should suppose; that would be my recollection.
Q. You are sure there was nothing of that kind before?
A. I think not with Mr. Miller.
Q. Was there with the bank, or any of its officers, agents, or attorneys?
261 A. I am not sure that there was before. I can't now recall it. I can tell you, if you want to know, all about this transaction.
Q. What, in your judgement, in the spring of 1860, was the value of the property covered by that mortgage?
(Objected to.)
A. It had no marketable value at all, and it did not rent for more than enough to pay the taxes and pay for renting it.
Q. (Question repeated.)
A. Do you mean, what is my present judgement as to its value at that time?
Q. No; I want your opinion as it was in the spring of 1860, in regard to the value of this property in the spring of 1860.
A. Of course I can't remember now that I had any opinion as to the value of it then; I don't think that I performed that mental operation, but I state the general fact that so far as the question of value being applied to marketable value, that there was not any; and, so far as it applies to actual value, that my rule in regard to the property then and now is that it is actually worth what it will pay five per cent. net income upon. Now, at that time, I doubt if there was any speculative—what men call speculative—value to that property; in other words, there was no market, no ability to sell property to parties who were willing

262 to buy it and hold it, not for what it was worth at that time, but for what it might be worth in the future.

Q. Then, I understand you to say, in substance, that you don't think it was worth anything. Do I understand you right?

A. I, of course, am not responsible for your understanding of the thing.

Q. I understood you to answer that your estimate of value of property was predicated on the income it would yield, and that this property, at the time referred to, would not pay any more than the taxes. I am asking you now once more for your opinion as to the value of the property at that time; will you give it to me?

A. I can't give it more fully than I have.

Q. Was it your opinion, in the spring of 1860, that the property included in that mortgage was worth more than the amount of the incumbrance?

A. It was my opinion at that time that that property could not have been sold in the market for the amount of the incumbrance for cash. It was my opinion at that time that, in time to come, it would be worth more than the amount of the incumbrance and interest.

Q. I don't ask you about its market value, nor about its value on a cash sale; but the question is whether, in your opinion, that property was worth more or less, for any purpose, in the spring of 1860 than the amount of that incumbrance; what was your opinion at the time?

A. Well, I can't remember, as I told you before, that I had any opinion about it at that time; I don't know that I formed one.

263 Q. Then, you mean to say that you would willingly shoulder the responsibility of paying one-third of that incumbrance in the spring of 1860, & that you did do so & subsequently paid it, & yet that you have no recollection now of what your opinion was on the point in question at that time; is that so?

A. No, sir; if I meant to say so, I have got a voice to do it.

NOTE.—It is stipulated that the exam'n of the witness, E. Mariner, be not resumed, for his convenience, till the 19th inst., at 9 a. m.

Recess till two o'clock.

Deposition of B. K. MILLER resumed.

Q. Did you have one or more interviews with Mr. Mitchell, in regard to this title, pending the negotiation of sale?

A. I don't think I ever did, pending the negotiation.

Q. Did you before?

A. No, sir; I don't know when the negociations were made. All I know about it is this, that they sent me those abstracts, and I examined the abstracts and gave my opinion on them. I had no business to talk with Mr. Mitchell, or anybody else, on the subject.

Q. Do you remember having any conversation with Mr. Mitchell pending that negotiation, or of anything being said by him in regard to the pendency of this suit, or the existence of the judgment upon this bill so filed?

264 A. I never did, to my recollection.

Q. Do you know whether your correspondence or opinions that you gave in writing, in any way alluded to this suit or the judgment upon which this bill is filed?

A. It did not, so far as I can remember.

Q. Have you examined lately to see?

A. I read the letters over this morning.

Q. Is it not true that mention was made, in one of your letters to Mr.

Mitchell at that time, about this judgment of Graham and Scott's, and that, in view of the fact that the St. Paul Road, or whoever was purchasing for it, was obtaining the warrantee of James Ludington, that it was for them to consider whether that was a sufficient indemnity against possible damages on this thing, or something to that effect?

A. I have no recollection of that fact, and no letter that I have seen this morning states that.

Q. Did you read them all this morning?

A. I presume I read them all, but I may possibly have not read them all. There is a good many of them.

Q. You can't say now positively that there was not something of that kind in some of those letters?

A. I can't say positively, because this is a matter that took place pretty near ten years ago, and when men get older they don't remember so well. My recollection is that the pendency of the suit of
265 Graham & Scott is not referred to in any of the abstracts which I examined.

Q. Who got up the outstanding tax title against a lot, in respect to which you examined the abstracts; the Milwaukee & St. Paul Railway Company, or Mariner, Ludington, & Kneeland?

A. I don't remember.

Q. Do you remember of any money being retained, after a part had been paid, by the St. Paul Company as an indemnity against these outstanding tax titles, and to be retained by the St. Paul Company until Mariner, Ludington, and Kneeland had gotten up those tax titles?

A. I have no recollection of anything of the kind, and probably would not know, as I had nothing to do with the negotiation.

Q. Do you have any remembrance of money being kept back?

A. I have no memory of anything of the kind.

Q. On reflection, Mr. Miller, is it not true that there was money kept back then, some $6,000 or more, to be paid over when you certified to Mr. Mitchell or the company that these tax titles were all cleared off?

266 A. I have no recollection of it. I recollect one circumstance, that there was $5,000 kept back for another man, but none of these men—no one connected with this. It may have been so, but I don't remember it.

Q. Have you examined your books to ascertain and have you ascertained who paid Finches, Lynde & Miller their fees for foreclosing the $4,000 mortgage above referred to by the Bridgeport Savings Bank?

A. I decline to answer the question, for the same reason that I refused to produce copies of opinions and letters.

Q. Did Mariner, Kneeland, or Ludington ever have any negotiation with you as attorney for the Savings Bank pending the foreclosure in regard to the purchase of property covered by the mortgage?

A. I think they did not.

267 Cross-examination:

Q. Was there anything on those abstracts or connected with that transaction, so far as you had to do with it, to bring to your notice this claim that is now set up by the complainants in this suit?

A. No, sir; I think I can swear positively to that; not to my recollection.

Q. Was this claim of this complainants ever brought to your notice by anybody or in any way during the whole time that you were engaged in

examining those titles or advising with Mr. Mitchell or the railroad company in regard to it?

A. No, sir; not that I remember. If there had been I certainly should have referred to it in my opinion to Mr. Mitchell, so as to save myself from any after blame in the matter.

Q. Is it not possible, Mr. Miller, that at some stage of that negotiation that the fact of the existence of this claim was talked over between your firm and Mr. Mitchell, and the legal consequences of the St. Paul Company's buying these lots under the circumstances talked over and explained by you as their attorney, and that the company concluded to buy, taking their own chances, after it had been thus talked over?

A. The thing is so long ago, and you have asked me about things that took place a good many years ago, that it is very hard for me to tell now and fix times. I should like to think the matter over
268 before I make an answer to that question. I would like to look over the correspondence and opinions.

NOTE.—June 18, 1872, Mr. B. K. Miller appears before the examiner and makes the following answer to the last question put him:

A. I decline to answer this interrogatory for the same reason as before, that it calls for communication with a client.

JUNE 19, 1872.—Parties appeared pursuant to adjournment. N. S. Murphy for complainant; E. Mariner for defendant Ludington; John W. Cary for defendant The Milwaukee & St. Paul Railway Company; and the direct examination of E. Mariner on behalf of the complainants was continued as follows:

Q. What is your opinion now, sir, of its value?

A. Aside from the improvements I should think they were $15,000.

Q. Now?

A. Yes.

Q. In their present condition what, in your judgment, are they worth?

A. I can't tell what buildings there are on them. Aside from buildings, I should think $15,000. They are only 40 by 100, the full lots, and lot one is an irregular lot. I have forgotten how many feet there
269 are in it, but I think it is smaller than a full lot.

Q. Who negotiated in behalf of Mariner, Kneeland, and Ludington with the Bridgeport Saving Bank for the transfer of the title acquired by the bank on the foreclosure of the $4,000 mortgage?

A. I did.

Q. How long, according to your best recollection, was it before the execution of the conveyance by the Bridgeport Bank to Kneeland, Mariner, and Ludington that you first spoke to the bank about it?

A. I should not think any long time, but I can't tell now.

Q. Was it done by letter or by verbal conversation?

A. I think very likely the first talk I had about it was not with any officer of the bank. I think very likely I may have written about it, though I have not any recollection about that now.

Q. Who was the person you think that you first talked to about it?

A. I think Edward D. Holton.

Q. Could you give any idea how long the negotiation for that transfer was pending, anything like an idea—your best recollection?

A. No; that is, I can say it was not six months, and I can't tell you now just how much negotiation there was. I can't tell you that Mr. Kneeland did not talk with Mr. Holton, and I can't tell you that
270 he did not talk with Mr. Sterling, but my impression is that if he did it was casual. I think that I did the mass of it.

Q. The time is what I want to get at, if you can approach it.

A. No, I can't. It may have been all within two weeks, and it may have slipped along further, and it may have been all within a week.

Q. Was Mr. Sterling, the treasurer of the bank, here at the time that the trade was completed?

A. I can't say that.

Q. You negotiated the purchase, as I understand you, from the bank for yourself, Kneeland and Ludington?

A. Yes, sir.

Q. And the consideration which you agreed to pay was the amount due for principal, interest, and costs on the judgment of foreclosure?

A. That would be my recollection. I can, perhaps, correctly get at the exact amount. Mr. Holton paid something; whether that was in addition to what we paid I am not sure.

Q. What interest did Mr. Holton have in that?

A. Mr. Holton had endorsed the note, if it was a note, or guaranty, or bond, if it was a bond. He was personally liable to the bank for the money.

Q. And interested in having it paid?

A. Yes; interested in having it paid out of the property—in having us pay it. Now whether Mr. Holton paid to Finches, Lynde & Miller a sum to induce them to foreclose the mortgage and not go against him on the note or on his liability, or whether he paid to them what they charged the Bridgeport Savings Bank over and above the costs of the suit, I can't now tell. I knew all about it at the time, but I can't tell what the amount is.

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NOTE.—Witness is shown what purports to be an answer made by E. Mariner to the bill of complaint in this cause, marked "filed Jan'ry 7, 1861," and is asked if that is in the witness's handwriting, and whether that was the answer put in by him when he was formerly a party defendant in this cause.

A. It is none of it in my handwriting except the signature and the jurat.

Q. Is it the answer filed by you to the bill of complaint in this cause.

A. Yes, I suppose it is. I suppose it is the original answer. It seems to be.

Q. On the 7th page of this answer—it seems to have been verified on the 7th day of January, 1861—these words occur: "That he (meaning you) derives such title under and by virtue of a deed executed to this defendant by one Edwin H. Goodrich on the 18th day of November, 1857." State whether that was not as the fact was at that time in regard to your title to this one-third interest in these lots.

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A. I presume it was, still I may have had the equitable title to it long before that. I did have the equitable title to some part of it and may have had to the whole of it.

Q. On the same page of the answer the following occurs: "This defendant, further answering, shows that he purchased the other one-sixth of said mortgaged property described in the complaint after he had read the first bill filed by Newcomb Cleveland against the said company (meaning the La Crosse & Milwaukee Railway Company) and others;" state whether that was at the time a correct statement in regard to that matter.

A. It was. Everything that there is in that answer is substantially correct. I say substantially, because I don't now know what there is in the answer just. I have not read it lately. And when I drew it the matter was fresh in my recollection. As I suppose, I closed it up when

I sold to the St. Paul Company when this suit was dismissed. I haven't tried to carry it in my memory since then, and I have in a measure forgotten about it.

Q. State whether Kneeland, Ludington, and Mariner purchased lots 13 & 14 in block 155, subject to a mortgage before that time executed by the Milwaukee, Fond du Lac & Green Bay Railroad Company, and
273 delivered to one John B. Lee, for about $900.

A. We purchased some lots in that block subject to a mortgage to Mr. Lee. I can't give the number of them, but I think I did give them in my answer. At that time I knew what the lots were.

Q. Was that mortgage ever subsequently paid; and, if so, by whom?

A. Yes; I am sure it was paid. I have a sort of impression that Moses Kneeland paid the money, but I can't be sure. I don't recall the fact of its having been paid, of the payment of it, but my impression is that Moses Kneeland paid it, but for a while Moses had charge of the property, and afterwards I took it.

State whether you know whether it was in fact paid subsequent to your purchase by yourself, Kneeland, & Ludington.

A. I don't know who did pay the money, but we ultimately bore our share in that payment.

Q. Kneeland's heirs, Ludington, and yourself, in 1864, contracted and sold, did you not, these lots to the Milwaukee & St. Paul Railway Company, or some part of them?

A. I can't tell how that contract was, whether it was in that way or whether we contracted severally. My impression is that we con-
274 tracted severally. I don't think Kneeland's heirs sold in 1864. The St. Paul Company were here looking for depot grounds. I think that I made them a proposition for the purchase of all the property described in this complaint, which they purchased, either signed by myself, James Kneeland, as administrator for the estate of Moses Kneeland, and James Ludington, or signed by me as attorney for them. That proposition I suppose was accepted. I never was officially advised about it, but prior to the making of it they had negotiated with Mr. Ludington and Mr. Kneeland and agreed with them, as I understood it. I was not willing to sell at what they were. I subseqently met Mr. Cowdry and Mr. Chamberlin, and they asked me to make the sale at the price that had been talked, and I agreed to it. And after that agreement I made them that proposition. I was in the habit of doing and making all the contracts in respect to that property for a long time, and signing them myself with the names of Moses Kneeland, James Ludington and my own. After I had made this proposition, and after I understood it was accepted, they did not pay for the property, nor did not go on to close the contract, did not make any attempt to close the contract for several months, but they went into possession of the property, and I gave them notice to quit,
275 under the statute, and threatened to commence a suit, and perhaps did to get them off, and upon that some one of the officers, I can't tell who now, told me that if I would convey they would carry out the bargain with me, and I made the conveyance, and they paid me some time before any other conveyance was made and before they paid anybody else. I made the conveyance of my share.

Q. Paid you for your share?

A. Yes; I assisted Mr. Ludington to finish his trade in some way. I did not have anything to do with the Kneeland estate. That's all I know about it.

Q. With what officer of the St. Paul company was this trade or sale

negotiated; was it a committee of the board of directors or was it the president of the company?

A. The only negotiation that I had about it was with the board in session, except Mr. Mitchell. Mr. Mitchell was not present. He had a tract of ground in which he was interested that he was selling to the company, and he was not present. Mr. James was presiding at the board. I gave them there a price for the property, and had a talk with them about it.

Q. In open session?

A. Yes; the only other time that I can now recollect that I talked about it with any other officer of the company about the sale
276 was with Mr Chamberlin and Mr. Cowdry one night, and at that time Mr. Chamberlin and Mr. Cowdry and I came to an agreement. That is all that I can recall. There were other talks I presume. They were here a couple of days.

Q. Was this talk with Chamberlin and Cowdry subsequent to your interview with the board?

A. Yes.

Q. Is it not true, as you understood, that the board of directors of the St. Paul Company appointed a committee to negotiate this purchase, consisting of three of its directors, of whom Mr. Mitchell and Asahel Finch were two?

Well, I havn't any recollection of that fact. I think very likely they did appoint a committee. I would not have supposed Mr. Mitchell would have been on it, and I am very sure that I never negotiated with Mr. Finch. If there was a committee, of course I knew it at the time, but I can't now remember about it.

Q. You won't say, now, that you did not have a talk with either Finch or Mitchell in regard to that matter, but simply you don't remember it?

A. I haven't any idea that I ever talked with Mr. Finch; and if I did, I think I would remember it. I never talked with Mr. Mitchell about it.

Q. How much did you contract with them to receive for your interest in the property?

A. $18,000.

Q. Payable in what?

A. Seven per cent. mortgage bonds of the company.

277 Q. For the face value of $18,000?

A. Yes, sir; I took them at par.

Q. Secured by mortgage upon this same property sold?

A. Yes. There was a mortgage made upon the entire depot grounds purchased to secure bonds that were given for the purchase-money, so that every seller got a lien for his bonds on all the property purchased. The bonds were seven per cent. bonds, ten years to run, and the whole amount of the mortgage was $150,000.

Q. Were the other sellers of this property paid the same amount and in the same way, so far as you know—Kneeland and Ludington?

A. Ludington was paid the same amount that I was, and in the same way. The Kneeland estate, I think, got the same amount, but I can't be sure; that is my impression. I never knew about it except by hearsay. They received it in money.

Q. Who was to examine and pass upon the title of these lots for the company?

A. Finches, Lynde, & Miller did. I don't know who was to. There

was no contract about it. Finches, Lynde, & Miller acted for the company and I acted for myself and for Ludington.

Q. In your proposition, and in Ludington's proposition, made, as you can't remember whether by yourself or both, and all, or by you
278 individually; was there anything said in regard to the covenants of warranty that you were to respectively give of these titles?

A. I can't remember now; I haven't any idea.

Q. Was that proposition left with the board of directors, so far as you remember, or delivered to any officer of the company?

A. Yes. Well, I am now satisfied that it came into the hands of the company.

Q. Do you remember whether anything was said in that proposition in respect to the outstanding tax titles upon these lots and the outstanding taxes?

A. Well, no man can remember a thing of that kind, but I am reasonably sure that there was not anything said about it.

Q. Before you executed your conveyance of your interest in these lots to the St. Paul Company there was something said, was there not, in regard to these taxes?

A. Yes, sir.

Q. I mean between you and the agents of the St. Paul Company negotiating the purchase?

A. Yes, sir.

Q. Who was the party or the parties with whom you talked in regard to those taxes?

A. I think B. K. Miller. I don't remember of talking to anybody else about it; of course I may have talked with a good many more, but I have no recollection of it or who they were.

279 Q. State whether you talked with more in regard only to the tax interest on your third, or whether you talked with more in regard to the taxes upon the whole property.

A. I can't tell after this lapse of time which way I talked.

Q. What I wish to know is, whether in the talk that you had with Mr. Miller about these taxes and tax titles you interested yourself and talked about the tax titles that were upon the whole lands, or simply as to those portions that you owned yourself?

A. The talk I had with Mr. Miller was after I had threatened the company with a suit to get them out of the possession of the property. After I was referred to him by somebody, and who that somebody is, I can't tell, and the interview with him was in respect to my undivided one-third of the property; but how I talked about it, whether I mentioned the taxes as being on all the property or being on that one-third of the property, I can't remember; but at that time I was not representing anybody but myself, or undertaking to represent anybody.

Q. Were all of the $18,000 in bonds delivered to you at the same time?

A. I think not.

Q. How many different times were they delivered?

A. I think twice.

Q. How much was delivered the first time according to your best recollection?

280 A. I haven't any recollection of what the amounts were, and I am not sure but that I got all of my own bonds at one time and Mr. Ludington's at another. I would not like to be positive either way about it. I haven't any positive recollection.

Q. Is it not your recollection, Mr. Mariner, that some portion of these

bonds going to yourself or Mr. Ludington were kept back by the company, after the first batch was delivered, to indemnify the company against and to give you time to get up these outstanding titles?

A. I haven't anything that amounts to a recollection as to how that was. I have a recollection of having received bonds at two different times and a recollection of having received my own bonds and Mr. Ludington's, and that I received my bonds and closed up the transaction as far as I was concerned some time before Mr. Ludington received his, and the transaction was closed up as far as his was concerned; that is as definite as I can be. There is no reason occurs to me now why I should have taken part of my own bonds at one time and part at another, and I would not say now that I remember that it was not so.

Q. Isn't the reason which I have just suggested, Mr. Mariner, the real reason, and wasn't that the fact that they were kept back, some portion of them, until you got up these outstanding tax titles?

281 A. Well, as I say, I have no such recollection as that. That thing don't come to my mind that way.

Q. Have you any remembrance of some delay in the delivery of these bonds, or any part of them, as incidental to some time that was required in getting up the tax titles?

A. No; I can't remember any such thing as that. I have this recollection in respect to that: There were some outstanding tax certificates, and, perhaps, tax titles, that I did not get up, and as my recollection is it was arranged in this way: They paid me interest from the time that the trade was closed, that is, the time that Mr. Chamberlin and I agreed, and that interest was paid in currency, that is, what there was of it after deducting some sum or other for tax certificates or tax deeds, or something of that kind, which the company had paid out for those tax titles. How much that sum was I can't tell, and I don't know as I have any means of finding out; perhaps in the neighborhood of $400.

Q. In the shape of interest?

A. It was abated from interest money. I got the full $18,000 of bonds.

Q. Then, I understand it to be this way: that there was some delay for some reason in the delivery to you of the $18,000 bonds, and the company for that delay paid you interest, or agreed to, on this $18,000, and that when they come to pay that interest the company had meantime paid out about, as you think, $400 for outstanding tax certificates, or tax titles, which was deducted from the interest due you, and

282 you received then the $18,000 bonds and the interest money. Is that so?

A. Yes; that is substantially as it was.

Q. Do you know, or can you ascertain, about the date that you received these $18,000 bonds?

A. Unless I can find the entry of the interest money I can't get at the date with any accuracy.

Q. Can you tell the year?

A. I can get at one of two years. I got the $18,000 bonds and interest money at the time I delivered my deed, but my impression is that the deed bore date some time before I delivered it or got the bonds.

Q. Have you any recollection as to the persons from whom the railroad company had purchased these outstanding certificates or tax titles, or was to have purchased them at the time?

A. Well, some of them were from the county of Milwaukee, some from the city of Milwaukee, I would say, and perhaps some tax certificates and perhaps some tax titles from somebody else.

Q. Do you remember whether they claimed to have purchased either from James Kneeland, James K. Warner, State Bank of Wisconsin, C. K. Wells, Daniel Wells, or John Pixley any tax titles?

A. No; I can't tell.

Q. As between you and the company, then, I conclude you were
283 to get up these tax titles either yourself or reimburse them for what they paid?

A. I can't remember any such bargain as that, but the price of the property to the railroad company at a perfect title was to be $18,000 in seven per cent. bonds as of the date that I made the arrangement with Mr. Chamberlin, and as to tax interests and tax titles that were outstanding which did not belong to me, I told them where they were, or they found out for themselves from the abstracts, and at my suggestion they purchased those things themselves.

Q. You reimbursing them for what they paid?

A. I did not reimburse them anything.

Q. Have you not stated that you did pay them $400?

A. No, sir.

Q. I so understood you.

A. Then you misunderstood me.

Q. What did you mean, then, by saying that you allowed the company about $400, paid out by them for tax certificates and tax titles?

A. I don't think I said I allowed them that.

Q. Did you not say that it was deducted by them from the amount of interest due you?

A. I said that they paid me the amount of $18,000 and interest, less such an amount that they had paid for tax titles, but I had no obligation from them for $18,000 and interest from the date that I made the sale.

284 Q. I don't ask what your obligations were, but I ask you if it is not true that you paid them in the manner you described, by their deducting $400 from the interest which was due to you for tax titles bought up by them?

A. I did not pay them anything.

Q. Why then did you permit them to deduct the $400 which they had paid for tax titles from what they owed you?

A. I did not permit them to deduct $400 for what they had paid for tax titles from what they owed me.

Q. If I correctly understand you, after your interview with the board of directors you had a conversation with Chamberlin and Cowdry, when you understood them to accept your proposition, your terms, and that soon thereafter the company went into the possession of these lots, but for some reason or other permitted the matter to run along several months or more before closing it up, and that when you came to close it up you exacted from them interest on this $18,000 from the time that you considered the contract closed, and that your demand was acceded to with this further qualification, that in the meantime the company had paid out $400, or thereabouts, for tax certificates or tax titles, or both, and that the amount of that $400 was deducted from the interest which you exacted, and the balance of the interest and the $18,000 in bonds paid over to you?

(Objected to.)

285 A. It is not the fact, to start on, that they acceded to my terms at the interview.

Q. Which interview?

A. With Mr. Chamberlin and Cowdry. It is the fact that I acceded to theirs. It is not the fact strictly that they deducted any sum they

had paid for tax titles and tax certificates from a sum due me, but the amount of money and bonds that were paid to me was arrived at by taking the agreement which Mr. Chamberlin and I made, and taking interest from that time on the purchase price, and deducting from the sum of interest the amount that the railroad company had paid to other parties for tax titles, &c.

The company did deliver to me the $18,000 of bonds thereupon, and they did pay me some sum of money as interest, and the amount was the difference between the interest from the time of the talk between Mr. Chamberlin and me and the date of this payment, deducting what they had paid other parties for interest in the lands which they had bought of them.

Q. For tax titles and tax certificates?

A. Yes.

Q. You conveyed, did you not, Mr. Mariner, to Russell Sage, as trustee for the railroad company?

A. Yes, sir.

Q. When did you first know of the existence of the judgment upon which this bill was filed? It was recovered in Jan'ry, 1860, in the United States distr. court.

(Objected to.)

286 A. I can't tell when I first knew it. I knew it when I was served with process, of course. I can't tell whether I did know or did not know before.

Q. When was the suit of Geo. H. Walker against the Fond Du Lac & Green Bay Railroad Company settled, and who settled it?

(Objected to.)

A. Moses Kneeland and Walker, I suppose. I was not present at the settlement. I only know from hearsay.

Q. About what year was that?

A. It was probably in 1856 or '57.

Q. Do you know when Mr. Alexander Mitchell, or any officer of the St. Paul Railway Company, first knew of the existence of this judgment?

(Objected to.)

A. I can't tell that any officer knows of the existence of the judgment now. I can't recall anything that would bring it to my mind that any officer of the company knew of it. I don't remember of ever talking with any officer of the company about it; and I don't remember of hearing anybody, unless it is Mr. Cary, talk about it.

Q Shortly before the time that you conveyed to the railway company in 1864, is it not true that you got up and took conveyances to yourself of numerous outstanding tax titles against your interest in these lots?

287 A. I can't remember whether I did at that time or did not. I have got this recollection. There were a large number of tax titles against my interest in that property, and, except such as the railroad company paid for and purchased, I took them up; all that they did not buy and purchase. All that divided right here. Whatever tax titles I was entitled to have in my own right, and tax certificates that I was entitled to have in my right, at the time I made this bargain, I got up myself, either cancelled them myself, or took a conveyance to myself if it was not a matter for cancellation; and whatever I had no bargain, understanding, or agreement for with the holders at that time I avoided, & the railroad company bought them up.

Q. You parties took up all except some outstanding and held by

James Kneeland, James K. Warner, State Bank of Wisconsin, C. K. Wells, Daniel Wells, and John Pixley, on these lots?

A. Whatever tax titles were conveyed to me the railroad company did not pay for, and whatever was not conveyed to me they bought of the parties.

Q. But is it not true that you paid the company in the manner you before stated in regard to that interest money for what they bought up?

A. No, sir; it is not true that I paid the railroad company in any shape or form.

Q. If it be true that in law the deduction of the $400 from the
288 interest which you claimed was a payment to the railroad company by you for what they had paid out for tax titles and tax certificates, then you would be mistaken, wouldn't you, in saying that you never paid them anything for getting up tax titles and tax certificates?

(Objected to.)

A. Yes, sir.

Q. Do you know of the railroad company's paying out for tax titles on this property any more or other money than the $400, or thereabouts?

A. I don't know that they paid out any money; I don't know that they paid out $400; and I cannot now recall, if they paid out the $400, what it was paid out for. I can't state whether the same man's incumbrance that were on my third of the property was on the other thirds; so that I am unable to state whether they paid more than $400, but I presume they did.

Cross-examination:

Q. In your sale of the one undivided third of the lots that you conveyed by your deed, were you to convey to the company that third by a good title, and free and clear from all incumbrance?

A. I can't remember the language of the proposition that I made. But when I did close up the sale I gave a full covenant deed, which, as I understood the fact at the time, conveyed perfect title to the property to the railroad company, except such incumbrances and conveyances of the property as they had already purchased, and, I suppose, paid
289 for, so that when the deed was given the title was perfect, and I was not liable on my covenant, because the railroad company had what title I did not have.

Q. Was the price of $18,000 fixed by you for the property the price for a perfect title of the property?

A. I so understood, and I suppose they did; but what the proposition was, I can't remember. I think very likely the proposition will read so, but I can't remember now.

Q. When you did deed it, you deeded a full title, with full covenants of warranty in every respect?

A. Yes; a full covenant deed of the property.

Q. But at that time the railroad company had purchased some outstanding tax-titles; you can't tell what?

A. No; I can't tell what there was—something or other.

Q. Will you now state the whole transaction in regard to the foreclosure of the mortgage assigned by Holton to the Bridgeport Bank, and the subsequent purchase of that property by yourself, Kneeland, and Ludington?

A. As nearly as I remember it, when the note matured, or bond, or whatever it was—I think it was a note—it was sent on here for collec-

tion to the Farmers & Millers' Bank. Mr. Holton came to me about it (he was president of the bank at that time), and perhaps came
290 to Mr. Kneeland, and asked us to pay it; he was endorser or guarantor of the debt; I told him that the creditors of the railroad company claimed that we held that property in trust for the creditors by reason of an alleged fraudulent purchase of the property by Mr. Nash, and that we would not pay the money on the note for that reason. At that time, I think, there had been two suits commenced—certainly one—one bill filed by Mr. Newcomb Cleveland; I think it was then pending; but I am not sure about that; Mr. Holton was endorser on the paper and was anxious that we should pay it; money was very close here, and $5,000 was then a pretty large sum for anybody to pay. Mr. Holton remonstrated with us, and said that he was endorser there, and that it was not right to let it come on him, and asked us to pay it or arrange it in some way; he said the bank would give us time on it perhaps; but we told him we would not do anything at all about it; that the property was there, and the bank could foreclose and sell it if they had a mind to. It is my impression, though I can't be sure about that, that in the course of that conversation, or one with Mr. Sterling and him, that I told him that if at the sale—if the property was sold—and all the judgment creditors of the La Crosse & Milwaukee Railroad Company were made parties, so that at the sale we could get a perfect title, that we would bid the property off so that Mr. Holton should not lose anything. I can't now tell whether I told that to
291 Mr. Holton or Mr. Sterling, or to both of them; but at all events, I made that plain to them, that I was unwilling that Mr. Holton should lose anything by the transaction, or be troubled by it, but that we would not pay any money there until we were sure that we would have title to the property if we did pay for it. Mr. Holton thereupon corresponded with the Savings Bank, as I understood, and procured the bank to foreclose the mortgage instead of looking to him. The mortgage was foreclosed. When it came around to the time of the sale we could not raise the money to pay it, Kneeland, Ludington, and I. I think Mr. Sterling was here at that time, but I am not at all sure, and I either met him and Mr. Holton, or him and Mr. Miller, and told them that we could not pay for the property, but if they would buy it at the sale, unless somebody else purchased it, of which there was not any probability at that time, and give us time for the property, we would pay for it, so that the bank should lose nothing. Mr. Holton recommended us to Mr. Sterling as men who would do what we said, if we could, and Mr. Sterling finally agreed to that. The property was sold and was bid in by the Savings Bank, and we bought it of them. We paid to the Savings Bank the debt and costs, I think, exactly, and Mr. Holton paid whatever additional amount or some additional sum to the Savings Bank, or Finches, Lynde & Miller, for letting him out in the transaction.

Q. Was there any writings between you and the bank, or anything but mere talk, in regard to this matter prior to the sale of the
292 property and the purchase by the Bridgeport Savings Bank?

A. It is possible that I wrote to the bank pending the advertisement of sale, or some little time before the sale, that we could not buy the property at the sale and pay the money; we could not raise the money. I think it is probable that I did.

Q. Was there anything else?

A. No; that was all. There was no understanding or agreement between the bank and us that they should bid in the property at all events, nor between Mr. Holton and us.

Q. You simply stated to them that if they did bid it in at the amount given, that you would buy it?

A. The first proposition, as I recollect it, was that if the property went to sale that we would buy it at the sale; that is, we would bid on it at the sale enough to clear Mr. Holton.

Q. But after you notified them that you could not do that, was there any other understanding; and, if so, what was it; or any further talk?

A. I think that was part of the letter, if I wrote a letter, that we could not pay, and that if they could not sell the property at the sale for enough to pay the debt to other parties, that if the bank bid in the property we would buy it of the bank and pay the entire debt and costs if they would give us time on it.

Q. Was there any agreement on the part of the bank that they would bid in the property, or that they would sell it to you if they did bid it in?

(Objected to as incompetent.)

293 A. I don't think that there was any agreement that they should bid in the property, nor I don't know as there was any special agreement between the bank and us that they should sell to us if they did bid it in. The bank did not want the property at the amount of the debt, nor did Mr. Holton want it at the amount of the debts, and the thing to be done, to be effected, was rather to get us to take it.

Q. They were anxious to have you take it?

A. Yes, certainly. The bank did not want the property at all.

Q. It was an effort on their part to get you to take it?

A. Yes. I agreed with Mr. Holton that right off, directly when we got a good title, we would pay the money, but when the time come round to get a good title we could not pay the money; then, as the next best thing, I told them if they would bid in the property and would give us time on it, we would buy it and pay for it so that they should lose nothing on it; that we would pay the debt and costs for the property; that is, the amount of the judgment.

Q. In 1855, were you dealing in real estate here in the city of Milwaukee?

A. Yes, sir.

Q. Were you acquainted with the value of real estate; what was then supposed to be its actual value and its prospective or speculative value?

A. In quite a considerable part of the city I was. That is, I 294 was acquainted with what was supposed to be its actual value. I had my own ideas of what was its speculative value.

Q. Were you acquainted with the value of property in the vicinity of this property and of this property?

A. Yes; to some extent.

Q. What was the value at that time of the property conveyed to Mr. Nash by the La Crosse & Milwaukee Railroad Company?

A. Well, it was from twenty to $25,000. Dr. Judd offered it to me during the spring or summer of 1855 (he was the president of the La Cross Company at that time) for $18,000, payable in monthly installments of $1,000.

(NOTE.—What Dr. Judd offered is objected to.)

Q. You say the whole of this property was offered to you by the La Cross Company for $18,000?

A. Yes; I did not buy the property at that price. I did not think it was worth it. The lots in block 158 were docked, and not over the front 50 feet of those lots were filled. Block 155 was not docked; the river in front of it was not dredged. Blocks 155, 156, & 157 were a marsh in

which the mud was probably seventy feet deep at that time and the water over that probably from eight to fifteen feet deep at that time. The only street along there was Reed street, and that was almost impassable.

Q. Were any of those lots, except those three in block 158 which you have mentioned, available for use at that time?

295 A. There were more than three in block 158 the front of which were filled. Vessels had been built there and the block partially filled, I think, as far west as lot 15. Yes, the whole of block 158 had been docked and the river dredged in front of it and the dirt thrown over, and where that dirt came the lot was filled above the top of the water about two feet. In 1855 and in 1858 they were not much above the top of the water at all.

Q. In 1855, '56, '57, '58—along there—what would the property rent for? What did it rent for?

A. In 1855 there was none of the property rented that I remember of. In 1856 it was filled; the lots in 158 and 155 were filled and docked. The lots in that block were rented in the summer of 1856 or in the spring of 1857 at fair rents, perhaps $1,700 for the whole block. In 1857 the parties to whom the block was rented failed. We got perhaps one-third of the rent in 1858. In 1859 we did not get over a quarter.

Q. Out of this $1,700?

A. Well, $1,500 perhaps; I have forgotten.

Q. How were the rents afterwards?

A. After that, in 1859 or 1860, we succeeded in renting block 155 to Wolf & Davidson. I think they paid us $350 a year for about half of the block and used the whole of it. Block 156 was not in any situation to be used until 1862, I think, and then we got no rent for it. Block 47 we never got any rent for. Kneeland bought Belden's building

296 and moved down there and it burned up.

Q. From 1855 to 1864, when this property was sold to the St. Paul Railway Company, did it rent for those nine years for enough to pay the taxes and the expenses of renting and collecting the rents?

(Objected to as immaterial.)

A. I would not have taken the property and paid the taxes and collected the rents for the entire rents for nine years from right on now. I would not agree to take the time that I spent in doing it for all the excess of rents over paying the taxes.

Q. Was anything expended by the owners of that property, Kneeland, Ludington, Goodrich, and yourself, in the year 1855; if so, how much?

(Objected to as immaterial.)

A. I can't tell now.

Q. Was there anything spent on it in 1856?

(Same objection.)

A. Yes.

Q. How much?

A. Well, I can't tell just how much. I think we paid R. C. Cady something over $6,000 for dredging, perhaps $6,700. I think we paid Starke for a dock $2,450, and we paid for paving and filling Reed street $1,500 perhaps. I can't tell just now what it was.

Q. Do you know about how much was spent on improvements on that property from 1855 to 1864?

(Same objection.)

297 We had expended up to the time of filing this answer on the 7th of January, 1861, $15,000.

Q. And from 1861 up to 1864, do you recollect how much?
(Same objection.)
A. I can't tell; we kept on there filling and putting that property in shape as fast as we could get anybody to rent it.
Q. Can you ascertain about what the expenses were?
A. No; I don't believe I can.
Q. Was there a large amount spent?
A. No; there was not any large amount except the year that we sold, I guess 1862 or 1863. In 1862 or 1863 Reed street was raised, paved, and a sewer put there, that must have cost $3,000, I should think, or $2,500—I can't tell; somewhere along there. No, I guess it cost about $2,300.
Q. From 1861 up to the time it was sold, did the expenses amount to $5,000?
(Objected to.)
A. I don't think they did. In 1864 it rented pretty well, and in 1863 tolerably well, and all of the rents were put in there, and I should say $3,000 in addition, but I can't tell.

Redirect examination:

Q. What answer did you receive from the Bridgeport Bank to the letter which you say you wrote to them, the substance of which you have given above in your cross-examination?
A. I did not say I wrote a letter. I said I communicated by letter either with Mr. Sterling or orally with Mr. Miller.
Q. What answer did you receive, however the communication
298 was made?
A. O, I was satisfied in some way that they would be very glad to do it and that they would do it; that if they bid it in they would give us time, and I was dead sure they would bid it in if they agreed to.
Q. In the conversation which you say you had with Holton about the time that this mortgage fell due, you say you informed him that the creditors of the La Crosse Railroad Company thought those lots had been fraudulently conveyed to Nash?
A. Yes, sir.
Q. And that you did not have a good title to them?
A. No; I did not inform him that I did not have a good title to them.
Q. That it was claimed you did not have?
A. Yes; that it was claimed we did not have.
Q. Didn't Mr. Holton, in this same interview, insist that you three parties should pay this mortgage because you had this conveyance subject to the mortgage and had agreed to pay it as a part of the consideration of purchase or otherwise?
A. No, sir; not that I recollect of; and, if he did, it was not true.
Q. Wasen't it true?
A. No.
Q. Wasen't there some truth in it?
A. I don't know what you mean by "or otherwise"; I had made no agreement with anybody to pay that debt.
299 Q. You had taken the conveyance, however, subject to it?
A. No; I had not.
Q. What kind of a deed did you take, warranty or quit-claim?
A. I think quit-claim.
Q. Did anybody else or your grantor or anybody else at the time of conveyance to you agree to pay the mortgage?

A. About that, I don't understand that there was any agreement than the one produced by Mr. Nash the other day.

Q. Which was between whom?

A. I can't tell; I don't remember now.

Q. You mean the agreement, do you not, that was introduced in evidence here and annexed to Nash's deposition, made by Nash and the La Crosse & Milwaukee Railroad Company when he purchased, whereby Nash assumed the payment of this mortgage, and the subsequent agreement made between Nash and Kneeland when he purchased, whereby Kneeland assumed the discharge of the payment of Nash's obligation to the La Crosse Company; you mean that agreement, do you not?

A. I have forgotten the tenor of those agreements, but I mean an agreement between Nash and Kneeland. The transaction between Nash and Kneeland is what I refer to. It is what Nash produced the other day.

Q. At the time you took the conveyance of your interest, was
300 there any agreement on the part of your grantor to pay this mortgage?

A. I don't know anything about it; I don't believe there was. Between the time that Nash took his conveyance and 1857, the property appreciated so largely in value that no one would have thought about making such an agreement; that is the reason I don't believe there was.

Q. Then, Mr. Mariner, it is true, is it not, that at the time of your interview with Mr. Holton when this note fell due, you held the third interest in there by quit-claim deed purchased with the knowledge of this mortgage, and without any agreement on the part of your grantor to pay it, and that Kneeland held another third of the property and had given his obligation to pay the mortgage?

A. Yes; I was aware of all these facts, but I was aware that the agreement was not binding unless we had the good title to the property.

Q. You mean that was your opinion?

A. I was aware of the fact.

Q. You say in your cross-examination that all of this property so acquired by you three parties was not sold to the Milwaukee & St. Paul Railway Company; will you state what portion of that said property was not so sold?

A. That part east of Reed street.

Q. In what block?

A. In block 3 and 157.

Q. Who owns that now, Mr. Mariner?

301 A. I don't know.

Q. Do you own it?

A. No.

Q. Any portion of it?

A. No.

Q. To whom did you convey?

A. James Ludington.

Q. When?

A. 1865, or '6 or '7; I can't tell any nearer. I must have conveyed in 1865, I think.

Q. You conveyed your third interest simply?

A. Yes.

Q. So you personally have no title in those lots to-day?

A. No title at all in any shape or manner.

E. MARINER.

Deposition of the witness Mariner to this part read over by him and subscribed by him in the presence of the opposite counsel and the exam'r.

FR. BLOODGOOD,
Examiner in Chancery.

EPHRAIM MARINER called and sworn for defendant Jas. Ludington:

In May, 1859, I knew Edward P. Whaling, and that he was secretary of the La Crosse & Milwaukee Railroad Company. I knew William Platt, and that he was vice-president of the La Crosse & Milwaukee Railroad Company; I think at one time president, but I have
302 forgotten about that. I have seen both of those gentlemen write since the year 1855. I have known the corporate seal of the La Crosse & Milwaukee Railroad Company. The seal annexed to the release is the seal of the La Crosse & Milwaukee Railroad Company; the signatures of Mr. Whaling and Mr. Platt thereto are in their genuine handwriting.

Q. How do you know that they are in their genuine handwriting; did you see them write it?

A. No.

Q. You mean then to give your opinion merely?

A. Yes.

Q. Did you know anything about the management of the La Crosse & Milwaukee Railroad Company's business when it was in existence?

A. Some of the time I did and some of the time I did not.

Q. Was it in the habit of striking off its seal upon little detached pieces of paper, such as is annexed to this resolution here, and peddling them out to officers of the company to be attached to such papers as they saw fit?

A. Not that I know of.

Q. You did not see this paper executed?

A. I have not any recollection of seeing it executed.

Q. Whose handwriting is that paper, to be marked Exhibit. , in; do you know? (Hands witness paper.)

A. Walter Chandler's, I think.

Q. Where does Chandler live?

303 A. In Milwaukee.

Q. Where was that paper executed?

A. At the office of the La Crosse & Milwaukee Railroad Company.

Q. Where?

A. In a little story and a half brick building. I don't know but it is a two story brick building on the south half of lot 7, block 41, in the second ward of the city of Milwaukee.

Q. Where does Platt live?

A. I think he is dead. He lived in Albany at the time, as I was informed.

Q. Isn't it true, Mr. Mariner, that that paper was not executed in the State of Wisconsin at all?

A. No, sir.

Q. Reflect upon it a little and tell me if it is not a fact that that paper was executed at Albany, New York, and that you have so stated to me before?

A. No, sir.

Q. Are you clear on that?

A. Yes, sir; perfectly.

Q. You don't know when this was executed yourself?

A. I think I do. I think I was present when it was done. I have an impression I was. I know what time it was done and knew at the time of its being done, and it is quite my impression that when Mr. Whaling executed it I was by, but I don't want to speak positively about
304 it. I would not say positively whether I was or was not.

Q. If you did not see it executed, if you are mistaken about that, of course you can't tell where it was executed, can you?

A. I can't positively; but I am reasonably sure that Mr. Whaling never went to Albany about the business of this company.

Q. If you did not see it executed you can't tell of your own knowledge whether it was executed in Milwaukee or out of it?

A. No; I don't believe I could. Yes, I could, in the way it was prepared in my office.

Q. Under your direction?

A. Yes. The release was. I drew the form for the release and I could be reasonably sure that it could not go to Albany and back by the time it was drawn.

Q. Who were you representing when you drew that release?

A. Well, I drew the form at the request of four or five men.

Q. For whom, at whose instance—the railroad company or Mr. Ludington, or who?

A. I think neither of the parties that you have mentioned, but I won't be sure about Mr. Ludington.

Q. Who?

A. I think I drew it at the request of Moses Kneeland, Edmund Townsend, and Byron Kilburn.

Q. What makes you think that Ludington had nothing to say about it?

305 A. Because there was a time when I was not Mr. Ludington's attorney, along about there.

Q. Don't you know it was not at that time?

A. No, for I can't tell about how long a time that was that I was not Mr. Ludington's attorney.

Q. Don't you know in 1859 you were his attorney?

A. I can't tell now, I say.

Q. Didn't you do business for Mr. Ludington in the year 1859 & 1860?

A. I presume I did in both of those years; there was a time when I was not his attorney, though.

Q. Isn't it a fact that you were his attorney in the year 1859, and in May, 1859?

A. I presume there has not been a time since 1857 when I have not been acting as attorney for Mr. Ludington in some things, but there was a time when I was not his general attorney, in 1858 or 1859. If I was not his general attorney, then I did not do this at his request; if I was, I probably did it at his request.

Q. What is your recollection about it, about your being his attorney in May, 1859?

A. I can't remember.

Q. Do you mean to say that Mr. Luddington never, directly or indirectly, prior to the drawing of that release, had any talk with you about that matter?

A. He did not directly. I would not be willing to say that he had not directly or that he had.

Q. What is the fact?

A. Well, I tell you I can't tell you further than I have.

306 Q. Were you ever an officer of the La Crosse & Milwaukee Railroad Company?

A. No, sir; I don't remember that I was.

Q Were you ever its attorney?

A. Never; that is to say—you mean general attorney? I have prosecuted a great many suits for it. I never was their general attorney that I know of. The La Crosse & Milwaukee Railroad Company had an officer that they called their attorney that they elected.

Q. I ask you whether you ever did any business as attorney for the La Crosse & Milwaukee Railroad Company?

A. I have done that frequently.

Q. During what years?

A. Probably from 1855; I think very likely that in 1856 and 1857 I did some little business in the prosecution of suits that I commenced in 1855.

Q. 1855, 1856 & 1857, according to your present recollection, you did business for them.

A. I say I did a little business in some particular suits.

Q. In those years?

A. Yes, I think; I would not be perfectly sure, but there was some suits that were dragging along, and if there was anything done in those suits I did it. There was one suit against Charles Zinn that was

307 commenced in 1855, and was closed in 1860.

Q In 1855, 1856 & 1857, who was the nominal attorney of the La Crosse & Milwaukee R. R. Co?

A. Well, there was three or four in that time, I think.

Q. Well, say 1855?

A. Samuel L. Rose.

Q. Where did he live?

A. Part of the time in Beaver Dam, perhaps all the time; if not, part of the time he lived in Milwaukee, along about that time.

Q. Who was attorney for it in 1856?

A. E. G. Ryan, Moses M. Strong, and H. L. Palmer, I guess.

Q. Who in 1857?

A. In 1857 and the latter part of 1856 I think that the general attorney was Moses M. Strong. I am not sure now that E. G. Ryan was ever general attorney, but he did the business of the company; that is, he tried cases for the company, as did Mr. Palmer, in 1856 & 1857—both, I think.

Q. When Mr. Rose was attorney for the company in 1855, isn't it true that you had the active management of the business under him?

A. That part that was done in the city of Milwaukee. When Judge Rose was absent, I attended to the business here. He was absent considerable of the time. When he was here he was a director, and what he done at this time I can't tell, but I did a considerable business in 1855 for the company.

308 Q. Isn't it true, Mr. Mariner, that you were paid by the company for the services you performed in that year?

A. To the best of my recollection, I was.

Q. How much were you paid for that year's services?

A. I didn't have a year's service.

Q. Well, I mean that year.

A. I have not any sort of recollection; I did not have a salary. I was paid for my services; that is, I made an account for what I did; that is my impression, but I can't tell now.

Q. State whether as such attorney you were freely and frequently

consulted by the officers of the La Crosse & Milwaukee Road in regard to its business interests.

A. Yes; three of the executive committee at that time were clients of mine.

Q. Who were they?

A. Mr. Goodrich, Mr. Ludington, and Mr. Kilbourn.

Q. Was Goodrich a member of the board of directors in 1855?

A. Yes.

Q. And a member of the executive committee?

A. Yes, I think he was continually. There may have been some little time that he was not. A man can't remember some sixteen years ago.

Q. You were a party in this case once before, Mr. Mariner—a defendant?

A. Yes, sir.

Q. Did you ever file an answer in this case?

309 A. Yes, sir; that is, I say I did. I have a press copy of one in my office.

Q. Will you consent to be made a party defendant again?

A. No; the certificate of Edward P. Whaling, under date of May 24, 1859, certifying a copy of the resolution Exhibit , is subscribed in the genuine handwriting of Edward P. Whaling, and he was at that time secretary of the La Crosse & Milwaukee Railroad Company. This certified copy of a preamble and resolution, Exhibit , certified May 24, 1859, is subscribed by Edward P. Whaling, secretary of the La Crosse & Milwaukee Railroad Company, and the signature is his genuine handwriting, and he was at that time secretary of the La Crosse & Milwaukee Railroad Company.

Q. Do you know of your own knowledge when these resolutions were passed by the board of directors, if at all?

A. I was not present at a meeting of the board of directors when those resolutions were adopted. I have seen them on the record of the company, and I know as a matter of hearsay when they were adopted.

(Counsel for the Milwaukee & St. Paul Railway Company objects to this examination as not being cross-examination.)

Q. These resolutions purport to have been passed by that board on the same day as the date of this other paper just introduced in evidence?

310 A. Yes, sir.

Q. You say you drew the form for the other release, & that you also drew the form for this resolution?

A. No. On reading it over I am dead sure I did not. If I did it has been wonderfully altered, for that is not my style of writing.

Q. You understood at the time that such a resolution or one kindred in character was to be passed?

A. No; I did not understand it was to be, but that it was passed.

Q. That same day?

A. Yes.

Q. Were you not personally interested in the passage of that resolution?

A. That takes a little better lawyer than I am to answer certainly about that. I don't think I was, but I was anxious to have it done.

Q. Why were you anxious?

A. Because I was the owner of one-third of the property described in that preamble and resolution, and while I did not believe that the passage of that resolution by the company, and the conveyance under it as

a matter of law was necessary to perfect my title to that property, yet, if I was wrong in my opinion as to the law, I had no question but what that would make the title perfect and unquestionable.

Q. And that is now your opinion?

311 A. Yes; that is now my opinion.

Q. Where was this resolution adopted—here in Milwaukee?

A. That is my understanding of it, that it was at the office of the company in Milwaukee.

Q. You were present when it was adopted, was you not?

A. Of my own knowledge, of course, I can't say.

Q. Can't you say distinctly whether you were present or not when it was adopted?

A. I have said a half dozen times I was not present.

Q. Who were the directors of the La Crosse & Milwaukee Railroad Company at that time?

A. Well, it was what was known as the Albany board.

Q. Give the names of those that you knew to be directors. Was Moses Kneeland one?

A. No; I think not. I think they were all gentlemen from abroad.

Q. What do you mean by the Albany board?

A. Well, I mean a board of directors that was christened the Albany board.

Q. Don't you mean a board of directors elected at Albany?

A. No. Alfred Noxen was one. Stephen Clarke & Eli Perry, they were men who lived at Albany.

Q. All of them?

A. No; I don't know as Alfred Noxen lived there.

Q. How many of them lived here in Milwaukee?

A. I don't think any. My impression was that none of them

312 lived in Milwaukee. I can't say but that Townsend was a member, and I can't say but that Kneeland was. I am not sure that they were not directors.

Q. And you think that Goodrich was not?

A. Was not.

Q. And Ludington was not?

A. No.

Q. And you were not?

A. I was never attorney for the La Crosse Railroad Company.

Q. Who was attorney then?

A. E. G. Ryan, or Ryan & McGregor. It is possible that Barnes was one of the Albany board.

Q. Did you ever see this resolution before it was adopted?

A. I don't believe I did.

Q. If you were interested in having it passed by way of giving you a good title beyond a question, why should you not have probably seen it?

A. Well, I don't know that there was any reason for my not seeing it.

Q. Do you know that you did not see it?

A. No; I can't tell now that I did not see it. I haven't any idea that I did not see it. I haven't any idea that I did.

Q. I observe that in one of the preambles to these resolutions it is recited that Moses Kneeland and James Ludington were the owners of the whole of these lands. Why was that recitation put in there and your name and ownership ignored?

313 A. I suppose that the man who prepared the resolution would be best able to give the reasons for doing it. I don't know of my own knowledge at all why it was done. I have an idea why it might

have been done, and that is, that at that time the title to the interest that I had was not in me.

Q. Who was it in?

A. I can't tell you now.

Q. After the conveyance to Kneeland, Ludington & Goodrich by Nash, was the title to your interest ever in anybody else than Goodrich and yourself, up to the time that you conveyed to the St. Paul Company?

A. I don't think that Mr. Nash conveyed to Kneeland, Ludington, and Goodrich, but I have forgotten.

Q. Who did he convey to?

A. My impression is he conveyed to Kneeland, but I have forgotten.

Q. When did you take your conveyance to yourself—about when?

A. I can't tell you now.

Q. Can you tell what year it was?

A. No, I can't. The records will show when I did it.

Q. Did you record your deed at once?

A. I can't tell you that.

Q. You were going on to state why your name and title was ignored in this preamble.

A. That is what I said; that the title, very likely at that time, was not in me.

314 Q. Do you know who it was in?

A. No; I could not tell.

Q. You could not tell anything about it?

A. No; the records would show.

Q. Isn't it true that the records at that time showed that Kneeland and Ludington did not pretend to own only two-thirds of it?

A. That I can't tell. The record will be the best evidence about that, I suppose.

Q. Why did this resolution recite that release should be given to Edmund Townsend, Edwin H. Goodrich, and Byron Kilbourn, as well as Kneeland and Ludington?

A. Inasmuch as I was not the drawer of the resolution I can hardly give the reason of the man's drawing it as he did. I suppose it was because the mover of the resolution wanted to include that. I don't know any other reason for it.

Q. Don't you know any other reason for it as far as Goodrich is concerned, that he, at one time, owned one-third interest which you owned?

A. No. I don't know that that was the reason. I don't know what was the reason, but I don't think that that was the reason. I have an opinion about the reason, and my opinion is that that was not it.

Q. Is that true as a matter of fact, that Goodrich did at one time own the interest which you owned?

315 A. Yes.

Q. Did you acquire your interest from Goodrich?

A. Yes.

Q. Isn't it true, Mr. Mariner, that Goodrich and you had an arrangement by which you were both interested to a certain extent in the ownership of that one-third interest?

A. At one time we were. I first bought half from him and then bought the other half.

Q. Did you take separate conveyances first for the half interest and then for the whole of the one third?

A. I can't be sure about that; I think not.

Q. How much time elapsed between the purchase of one half and the balance?

A. I can't give you any idea about that.

Q. Wasn't it all part of the same negotiation?

A. No.

Q. Can't you give any idea about the time?

A. Well, I could say that it was not five years, for instance, but to be at all certain I can't; I have had a great many transactions with Mr. Goodrich—real estate transactions.

Q. Did this never rest in parole—this agreement?

A. Well, I can't tell that. I have held a great deal of property in which Mr. Goodrich was interested, and he has, too, in which I have
316 been interested. I don't think that either ever executed a declaration of trust to the other. I don't remember; it is possible we have. He is a man I should be very willing should have the title to a piece of land of mine without a declaration of trust. I would not be willing now, but I would fifteen years ago.

Q. You took a conveyance for Goodrich of one-third interest in these lots?

A. I think I did, or two conveyances of one-sixth. I can't tell now which it was.

Q. If the deed does run one-third of these lots to you from Goodrich, then as a matter of fact would it be true that you bought them all at that time?

A. No.

Q. You might have taken a deed for a one-third or two-sixth and only bought one?

A. No.

Q. What do you mean by no?

A. I mean no.

Q. You knew that Mr. Goodrich was a director of that company, didn't you, at the time he was?

A. Well, part of the time I did, and I don't know but I did all the time. I can't tell when the company was first organized whether I knew he was a director at that time or not.

Q. When was it first organized?

A. Well, I think in 1852.

Q. You knew he was in 1852, didn't you?

317 A. O, yes.

Q. You knew that Byron Kilbourn was in 1855?

A. Yes.

Q. You knew James Ludington was in 1855?

A. Yes.

Q. You knew Moses Kneeland was?

A. Yes; I knew who were the directors. I knew from some time in 1855 up to the time that the company ceased to elect a board of directors substantially who the directors were. I knew a great many of them personally. I knew all the Milwaukee directors and almost all the Wisconsin directors—perhaps all of them personally. They elected Eastern directors. I knew several of them—the leading men.

Q. State whether in the year 1855 you were not the attorney of Moses Kneeland and James Ludington.

A. I was not attorney for Moses Kneeland in 1855 for any purpose; had never been. I did some business, I think, in 1855 for James Ludngton—perhaps all through the year I did more or less business. The

first thing I can remember that I did for Ludington—I have got a sort of a recollection——

Q. Were you not the attorney of Edwin H. Goodrich in 1855?

A. Yes, sir.

318 Q. Don't you know Mr. Mariner, to whom Mr. Nash sold these lots?

A. No.

Q. Don't you know to whom he conveyed them?

A. No; I have known but I don't know now. I can find out; that is, I say I have known—I have seen the deeds; that is what I mean. I won't say that, but I have seen the records of the deeds. It is possible that I have seen the original deeds, but I have no recollection of it now.

Q. Do you know who drew the deed from Nash to Freeland, Ludington, and Goodrich?

A. No, I don't believe there was such a deed as that ever executed.

Q. What sort of a deed was executed?

A. I can't tell, but my impression is a general deed to Kneeland, but I won't be sure, but it seems to me that it all went to Kneeland, then to Ludington, and then to Goodrich, but I won't bet on that. I won't bet that it did not go to Kneeland and to Ludington.

E. MARINER.

Deposition of witness Mariner read over by him to this point, and subscribed by him this 23d August, 1873, in the presence of the opposite counsel and the examiner.

FR. BLOODGOOD, *Examiner.*

319 At the examiner's office, Milwaukee, March 13th, 1873, before Fr. Bloodgood, examiner in chancery. Present, N. S. Murphy, of counsel for complainant; E. Mariner, of counsel for Ludington.

A letter from J. P. C. Cottrell, esq're, was presented, asking for an adjournment on behalf of the defendants, the Milwaukee and St. Paul Railway Company, in consequence of the absence of Mr. J. W. Cary, its solicitor and counsel. On consideration whereof, and of the proof of service upon Mr. Cary of two days' notice of the resuming of the taking of testimony of the complainant at this time, pursuant to the order of the examiner, made under the stipulation of the parties, the examiner stated that he would take such testimony as the complainants might produce, subject to the right of Mr. Cary, as counsel as aforesaid, to cross-examine them at any time before the expiration of the time fixed by the court for the closing of the testimony upon seven days' notice to the complainants' counsel, the complainants to produce the witnesses for such cross-examination, if within the district, unconditionally; if without the district, upon the payment or tender of the witnesses' expenses of coming to the examiner's office and returning, to be

320 made at the time of the service of the notice of cross-examination.

LAWRENCE G. GRAHAM recalled by the complainant and his cross-examination resumed.

Q. You have been sworn before in this case?

A. I have.

Q. Do you know Selah Chamberlain, and how long?

A. I do; since 1846. Since its organization he has, as I understand, been an acting director of the Milwaukee and St. Paul Railway Company.

(The complainant produces and offers in evidence a paper purporting to be a contract of release of the lots described in the bill of complaint herein of any lien thereon by virtue of certain judgments held by said Chamberlain and J. B. Cross, by virtue of judgment or judgments in their favors; paper dated Dec'r 7, 1859, and acknowledged on the same day, which paper the examiner marks Exhibit No. 6, Complainants' Exhibits, which paper purports to have been recorded in the office of register of deeds, Milwaukee Co., vol. 69, page' 11, 12, & 13, as per certificate endorsed thereon.

The introduction of this paper in evidence is objected to by defendants.

Paper introduced in evidence.)

A. I have known Alex. Mitchell since 1852, and Russell Sage since 1860. Mr. A. Finch since 1852.

321 Q. Do you know whether these gentlemen have acted as directors of the Milwaukee and St. Paul Railway Co., or either of them, since its organization, or any portion of said time? and, if so, state what time, as near as you can.

(Objected to by def'ts.)

A. Mr. Sage, I understand, has so acted all the time, since its organization. Mr. Mitchell, I understand, all the time also, and Mr. Finch about two years, I think, from and after the organization. This company was organized May 5th, 1863.

Q. State whether either of these three gentlemen at any time prior to Jan'ry, 1864, had any conversatian or negotiation with you in behalf of the said railway co. in regard to the purchase or settlement of the judgments referred to and described in the bill of complaint in this case.

(Objected to by def't: 1st. No proof yet that these gentlemen were directors of the co. 2nd. And testimony is immaterial, if they were.

NOTE. Complainants' counsel replies that he proposes to follow this with record proof that these parties were directors during the period referred to by the witness.)

A. Yes.

Q. State what they respectively said, with the dates, as near as you can remember.

(Objected to by def't.)

322 A. Mr. Finch told me that he was authorized by Mr. Sage to buy my judgment by giving preferred stock of the St. Paul Co. at par for the amount of the judgment. This was in the early part of the summer of 1863; I don't remember the exact date. I declined to accept the offer, because at the time there was no market value to the stock. I told them that if they would guarantee the stock to be worth seventy cents on the dollar, I would take it. During the same summer Mr. Sage—Russell Sage—made me an offer for my judg't. He offered me preferred stock of the Milwaukee & St. Paul Railway Co.

323 I told him I wanted a day's time to consider the matter. In a day or two after I went to Mr. Finch and told him to go to Mr. Sage, and say that I would accept the offer. In the mean time they got a decision in court here in their favor, and told Mr. Finch they didn't want to buy now.

On the 25th day of June, 1860, I was in Mr. Mitchell's office, or bank, borrowing money. This was immediately after Mr. Crocker had been appointed receiver in the suit in the U. S. district or circuit court for the foreclosure of the mortgage on the western division of the La Crosse Railroad. I had there a talk with Mr. Mitchell about all the litigation, including my judgment. He stated that matter looked more hopeful

now; that there would be a chance for us getting something. Several times afterwards I have talked with Mr. Mitchell about the St. Paul Co. buying my judgment. He stated several times that the St. Paul Railway Co. would give something for it; he couldn't say how much. These conversations, I think, were prior to the year 1864.

324 Q. Were Graham and Scott parties defendant in the case of Bronson and Soutter against the La Crosse and Milwaukee Railroad Company for the foreclosure of the 2nd mortgage upon the eastern division of the said road; and, if so, did you in that case put in an answer setting up your judgment in U. S. distr' court, distr' of Wisconsin?

(Objected to by def't; immaterial, and because record is best evidence.)

A. They were, and we did.

Q. Were you also party def'ts in the case of Bronson, Soutter and Knapp against the La Crosse and Milwaukee Railroad Company and others, in said court—U. S. distr. court, distr. of Wisconsin—in the foreclosure of the first mortgage on the Western Division of the said road; and, if so, did you file, or cause to be filed in the said cause, one or more petitions setting forth and referring to the judgments mentioned in the bill of complaint herein?

(Objected to by def'ts on same grounds as last question.)

A. We were so made parties and did file such petition. At the time of the offer made to me by Sage, above referred to, F. P. James was present and participated in the conversation.

325 Cross examination by Mr. MARINER:

Q. Who was present at your interview with Mr. Mitchell?

A. No person that I recollect of.

Q. How are you able to fix the date of it?

A. I borrowed some money in his bank, and I put the date of the note down so as to know when to pay it.

Q. Did you ever borrow more than once?

A. Yes.

Q. How many times?

A. Four times; 25 June, 1860, was the first; Sept'b'r 13th, 1860; March 12, 1861; May 14, 1861.

Q. Have you never borrowed any since?

A. Not that I recollect of.

Redirect examination:

(Witness here produces a paper, which complainants offers in evidence, purporting to be estimates of work done and materials furnished under the complainants' contract with the Milwaukee and Watertown Railroad Company, dated June 6, 1857.

Objected to as immaterial.

Witness says that this was the final estimate.

Objected to by def'ts.

Paper offered in evidence and marked by the examiner Exhibit 7, Complainants' Testimony.)

L. G. GRAHAM.

Read over to the witness and subscribed by him this 13 March, 1873.

FR. BLOODGOOD,
Exam'r in Chancery.

326 MILWAUKEE, WIS., *August 2nd*, 1873.

Parties appeared pursuant to adjournment. Present, N. S. Murphy for complainants; John W. Cary for defendants Milwaukee & St. Paul Railroad, E. Mariner for defendant Ludington.

Direct examination of Mr. GRAHAM resumed by Mr. MURPHY:

Q. Have you examined the records in the circuit court of Milwaukee County within a few days past of the foreclosure of a mortgage of $4,000, given in 1853 by the Milwaukee, Fond du Lac and Green Bay Company to E. D. Holton, and foreclosed by the Bridgeport Savings Bank?

A. I have.

Q. State whether, in examining that record, you discovered the names of Graham and Scott as defendants therein.

(Objected to by Mr. Cary.)

A. I think I saw the names there.

Q. State whether any papers were ever served—any summons was ever served on Graham or Scott in that case.

A. Not to my knowledge.

Q. With respect to yourself, how is it? I presume you have knowledge on that subject—was any served on you?

(Objected to by Mr. Cary.)

A. There never was any.

Q. I observe by looking at that record that Messrs. Palmer and
327 Stark entered an appearance in your behalf in that case. State whether they ever were authorized to make such an appearance for you or your partner, Mr. Scott, in that case.

(Objected to by Messrs. Cary and Mariner.)

A. They never were by me.

Q. When did you first ascertain, as near as you can now fix it, that there had been a foreclosure there, and that your names had been inserted as defendants therein?

(Objected to by Mr. Cary.)

A. Not until last week.

Q. The records of this case disclose that on the 30th day of November, 1863, a discontinuance was entered of this case as to Mr. Mariner. I ask you now whether that discontinuance was so entered with your knowledge?

(Objected to by Mr. Cary.)

A. It was not.

Q. State when, after the entry of the order, you first ascertained that such an order was made and the case discontinued as to Mr. Mariner.

A. I think about the time that you came into the suit.

Q. About what time was that?

A. I think in 1867 or 1868.

Q. Did you ever give any directions to your solicitors or any one else to discontinue the case?

(Objected to by Mr. Cary.)

328 A. I did not.

Q. And you had no notice that it was so discontinued until I came into the case?

A. I think about that time.

Q. Who informed you of the fact that the suit had been discontinued as to Mr. Mariner?

A. I think it was Mr. Orton or yourself. I can't say positively who informed me.

Q. Who has had charge, as between you and Mr. Scott, of the litiga-

tion upon which this bill was filed from the time the obligation commenced?

(Objected to by Mr. Cary.)

A. I had the principal charge of it.

Cross-examination:

Q. Were Palmer and Clark ever retained by you in any matter?

(Objected to by Mr. Murphy.)

A. They were.

Q. In what?

A. They were retained in my suit against the La Crosse Company.

Q. What suit?

A. The suit that had arisen out of my contract with the La Crosse and Milwaukee Railroad Company.

Q. What contract with the La Crosse and Milwaukee R. R. Company?

A. That one that this litigation arose out of—a contract with the Milwaukee and Watertown Company, and assumed by the La Crosse and Milwaukee Company.

Q. Up to what time were they retained by you?

329 A. The last that Mr. Palmer did for us was in November or December, 1858. There was no stated time. He was employed to put my claim into judgment.

Q. He recovered judgment in the State court for you?

A. Yes, sir; in the State court.

Q. Have they not been retained for you since then?

A. No, sir.

Q. When did you first hear of that foreclosure suit?

A. I think about the time that Mr. Murphy came into the suit.

Q. You say you never heard of it before that time?

A. I think I heard of a judgment that the Bridgeport bank had, but I do not recollect of this foreclosure suit; am not positive as to the name of this Bridgeport bank about which I have testified.

Q. How did you hear of that?

A. I think in my talk with Mr. Kneeland in regard to our La Crosse suit. I think I heard him say that the Bridgeport Savings Bank had a judgment against them.

Q. What Mr. Kneeland?

A. Mr. Moses Kneeland.

Q. When did you have any talk with Mr. Moses Kneeland?

A. I had more or less from 1860 to the time he died, in 1864.

Q. What was the subject-matter of those talks?

A. Oh, about the La Croose litigation as a general thing; something about railroad matters, &c.

330 Q. What La Crosse litigation?

A. The foreclosure of a mortgage on the La Crosse road and my judgment and such as that—Chamberlain's judgment and all of those things.

Q. Was not this matter of litigation between you and Mr. Knee'and frequently talked over between you and him—the matter of this suit?

WITNESS. Which suit?

Mr. MARINER The one you are testifying in now.

WITNESS. My suit?

Mr. MARINER. Yes, sir.

A. Yes, sir.

Q. And it was in some one of those conversations that you heard about the judgment of the Bridgeport Savings Bank?

A. Yes, sir.
Q. What property did you hear that it was against?
A. I did not hear that it was against any property.
Q. What was it about?
A. I do not know. He merely said that it was a judgment of the Bridgeport Savings Bank.
Q. What did he say about it?
A. He said that they had one, and I think he said that he had some interest in it, and that he was trying to get his pay the same as the rest of us.
Q. In what connection did he make that remark?
331 A. I do not know in what connection—merely in general talk all around.
Q. Now, did he ever tell you any such thing as you have testified to?
WITNESS. About the judgment?
Mr. MARINER. Yes, sir.
A. Yes, sir.
Q. Tell you that he had an interest in it and wanted to get his pay out of it?
A. He seemed to represent that judgment. He might have been an agent here for them. I do not know how that was. He seemed to have a lively interest in that judgment.
Q. Did you ever have any talk with Mr. Kneeland about arranging that judgment?
A. I think not.
Q. Did you ever have any talk with Mr. Kneeland about making an arrangement with him in respect to your judgment?
A. Yes, sir.
Q. What arrangement did you talk about making?
(Objected to by Mr. Murphey as immaterial.)
A. We made an arrangement providing that if he would assist me to get my pay he was to have an interest in some certain other matters that I was interested in.
Q. Your pay upon what?
A. Upon that judgment.
332 Q. (By Mr. MURPHY.) On your judgment?
A. Yes, sir.
Q. Against the railroad company?
A. Yes, sir.
Q. Was that arrangement reduced to writing?
A. I think it was.
Q. Have you got a copy of it?
A. I think I have.
Q. Where is it?
A. I believe I have got it in my satchel, or else it is at Whitewater.
Q. When did you make that arrangement?
A. I forget the date.
Q. Well, about when; before his death?
A. I don't know; it must have been a year or more. I won't be certain upon that point as to the date.
Q. Did you ever make any other arrangement, or have any other talk than the one that grew into this written contract which you say you had with Mr. Kneeland, about the suit between yourself and Mr. Scott and Mr. Kneeland and others on the other?
(Objected to as immaterial.)
A. I think not.

Q. Did you make an arrangement with Mr. Kneeland substantially like this, that you and Mr. Kneeland, with the assistance of Mr. Ludington and myself, should make a common cause against the St.
333 Paul Company, and that if we would do that—if he, Ludington, and myself would assist you, you would discontinue that suit?

WITNESS. Discontinue which suit?

Mr. MARINER. This one.

WITNESS. Which one do you mean?

Mr. MARINER. The one you are testifying in now.

WITNESS. My own suit?

Mr. MARINER. Yes, sir.

A. No, sir; I think not.

Q. Did you ever make any arrangement with Mr. Kneeland that embraced a stipulation like that asked in the question just now?

(Objected to by Mr. Murphy.)

A. No, sir; no arrangement.

Q. Did you ever talk up making an agreement with Mr. Kneeland, of which the discontinuance of this suit was one of the stipulations?

(Objected to.)

A. I do not recollect anything of the kind.

Q. Well, now, Mr. Graham, will you swear positively that you did not agree with Mr. Kneeland, as a part of some bargain between you and him, that you would discontinue the suit?

WITNESS. More than the contract I spoke of?

Mr. MARINER. Outside of that.

ANSWER. No, sir; I never did; never made any agreement.

Q. Did you ever tell him you would?

(Objected to by Mr. Murphey.)

A. I have no recollection of ever telling him I would until I got my pay.

334 Q. The question is, will you swear positively that you never promised to Mr. Kneeland that you would discontinue this suit as an inducement to Mr. Kneeland to aid you in your litigation against the St. Paul Company?

A. I never did.

Q. Will you swear positively that Mr. Carpenter never consulted you in respect to discontinuing the suit against me?

A. He never did previous to the discontinuance.

Q. Had you not, previous to the discontinuance, an understanding by the terms of which you were to discontinue this suit as to Mr. Kneeland, Mr. Ludington, and myself?

A. No, sir.

Q. How came Mr. Carpenter to make that stipulation?

A. I cannot tell.

Q. Did you ever ask him about it?

A. I think I asked him one day when the question came up here. He said he had forgotten why it was done, or something to that effect.

Q. When did the matter of discontinuance first become a matter of conversation between you and me?

A. I can't tell.

Q. It has been a matter of conversation between us, has it not?

A. I do not know. I would not say that it had not. I do not recollect.

335 Q. Well, Mr. Graham, don't you know that you and I have talked about that matter repeatedly?

A. I don't know what talk you had.

Q. I am speaking about you and me. Don't you know that we have talked about that matter repeatedly?

A. I think, since this matter has been talked up, you and I talked about it; since I found out that it was done.

Q. Don't you know that?

A. My impression is that we had some such talk.

Q. Can't you remember that we have talked about it repeatedly?

A. I cannot say how often. I think we have talked about it once or twice.

Q. Well, now, Mr. Graham, have we not talked about it before the discontinuance was made?

A. I do not know whether we have or not. I have no recollection of it.

Q. Did you not talk with Mr. Ludington before the discontinuance was made as to a discontinuance between him, Mr. Kneeland, and myself?

A. I do not know whether I have or not. I might have and might not.

Q. Have you not talked about it with Mr. Kneeland repeatedly?

A. I might have.

336 Q. When did you first speak to Mr. Carpenter about it after you knew that the discontinuance was made?

A. I think about the time Mr. Murphy and Mr. Orton took the suit.

Q. About when was that?

A. In 1867 or 1868. It was about that time. I would not be positive as to the time.

Q. What did you say exactly to Mr. Carpenter about it?

(Objected to.)

A. I think I asked him why it was done.

Q. Well, go on; tell all that took place.

A. That is all I said to him.

Mr. MARINER. I do not understand you.

WITNESS. I asked him why it was done.

Q. Well, what next did you say?

A. He replied that he had forgotten that he had done it.

Q. Is that as nearly as you can detail the conversation between Mr. Carpenter and yourself?

A. That is pretty nearly the substance of the conversation.

Q. Is that as near as you can tell it?

A. That is as near as I can tell it.

Q. When next did you say anything to Mr. Carpenter about it?

A. I might have been present when Mr. Carpenter and Mr. Murphey talked about it, but I never had anything special with Mr. Carpenter about it after that.

337 Q. What was it that Mr. Carpenter said; that he did not know it was done, or that he did not know whether it was done?

(Objected to.)

A. I think he said that he did not know why it was done.

Q. Didn't Mr. Carpenter say that he did it by your direction?

A. No, sir.

Q. Were you in the city about that time?

WITNESS. What is the date?

Mr. MURPHY. That is the fall of 1863, November 13, 1863. The stipulation is dated November 5, 1863, and filed Nov'b'r 13, 1863.

A. I cannot tell you where I was at that time.

Q. Were you here about that time—the fall of 1863?

A. I presume I was in Milwaukee in the fall of 1863.

Q. At that time, Mr. Graham, had you made any arrangement with

the Milwaukee and Minnesota Company to postpone or delay this litigation for a certain time?

A. I think not, sir.

Q. Did you ever have any such arrangement with them?

A. I think not.

Q. Did you ever have any arrangement that they should take this judgment and pay you for it?

A. I did.

Q. Was that arrangement in writing?

A. Yes, sir.

Q. When was it made?

A. I think in September, 1862.

338 Stipulation in writing signed by the solicitors of the respective parties, and is returned herewith, marked by the examiner Exhibit No. 8 Complainant's Testimony; said stipulation being introduced in evidence by the complainants.

339 MILWAUKEE, *August 5th*, 1873.

Mr. GRAHAM, being on the stand, desired to make the following explanation:

In regard to the time, that Mr. Palmer was employed by us, I would say that he was employed by us to put that claim into a judgment.

Q. What judgment?

A. The judgment against the La Crosse road. He sold some securities that we had hypothecated in October, 1858, and got judgment in November, 1858. That is all that I know that Palmer did for us with the exception that in 1860 or 1861, Mr. Kneeland and Jackson Hadley came to me and said that they wanted me to go in with them and resist the foreclosure of the first-mortgage bonds on the western division of the road with the Helfenstein mortgage. I held some of them. I asked them who they were going to employ as attorneys to take charge of the matter. They said Palmer & Butler. I told him that Palmer had ceased to be our attorney and I did not wish to employ him again. But they said that Mr. Palmer was all right, and they being around me for three or four days I finally consented to put our bonds in with

340 them, and the understanding was that when I received my pay on our judgment I was to pay my portion of the expense; I think there was some amount mentioned but I forgot the amount. The thing went on for a short time until this contract was made between Kneeland Graham and Scott in which they assumed to pay all of Palmer's charges in the Helfenstein mortgage case. That is all I know of Palmer being connected with our matter if that is a connection.

Q. Where were you, Mr. Graham, from the summer of 1858 until the fall of 1859?

A. I was in Minnesota.

Q. During the whole of that time?

A. During the whole of that time.

Q. You were not in the city of Milwaukee?

A. I think not until the fall of 1859.

Q. What were you doing in Minnesota?

A. I had a railroad contract.

Cross-examination by Mr. MARINER:

Q. Will you swear positively that you were not in Milwaukee during that time?

A. To the best of my knowledge I was not; I think I went up in July, 1858, and in the fall of 1859; I think I came to Milwaukee first.

Q. You know that does not answer my question. Now will you please answer it?

A. That is the only way I can answer it.

341 Q. I want that question answered. The question is, can you swear positively that you were not in Milwaukee during that time?

A. I cannot do it; but to the best of my knowledge I was not.

Q. Did you ever have any conversation or agreement with James Ludington by the terms of which you were to discontinue this suit as against either of us, Kneeland, Ludington, and myself; and, if so, where and what?

(Oobjected to as immaterial and incompetent.)

A. None with Mr. Ludington except that contract in writing.

Q. No conversation at all?

A. Not that I recollect of, except that contract in writing.

Q. Did you ever have any conversation with Kneeland in which you alluded to or talked about an agreement to discontinue this suit as to either Kneeland, Ludington, or myself; and, if so, what was the conversation and when and where?

(Objected to.)

A. No agreement to discontinue, except by that contract in writing.

Q. I mean as to either of the three?

A. As to either of the three.

Q. I ask as well for conversations as for agreement?

A. The only conversation I recollect having with Mr. Kneeland was in the fall of 1863, before he died. Mr. Kneeland was very anxious

342 to close up all his litigations with the La Crosse Company, and wanted to know of me what was the least I would take for my claim provided he could arrange a settlement with the company. I think I stated a certain amount, but I made no agreement to release anything or did I sign anything.

Q. Can you tell what took place in that conversation and further than that?

A. I cannot; that was the gist of the conversation.

Q. And you cannot recall any other conversation either with Mr. Kneeland or Mr. Ludington touching the discontinuance of this suit as to any of the parties to it except what you have detailed?

A. No, sir; I cannot.

Complainants introduced in evidence a stipulation marked Exhibit . A certified copy of petition by Graham and Scott from the United States circuit court for the district of Wisconsin in the case of Greene C. Bronson, James T. Soutter and Sheppard Knapp versus The La Crosse Railroad Company and others, filed May 8, 1862, marked Exhibit 9. Also certified copy of petition in the same court and cause of

James A. Helffenstein and others, filed therein September 24,

343 1862, and marked Exhibit 10. A like certified copy of petition in the same court and cause of the Milwaukee and St. Paul Railway Company, filed May 6, 1863, marked Exhibit, 11.

Adjourned until Thursday, August 7th, 1873, at 2 o'clock p. m.

AUGUST 14TH, 1873.—Deposition of the witness Graham read over by him, and is now subscribed by him in the presence of the examiner.

LAWRENCE G. GRAHAM.

Deposition of Asahel Finch.

MILWAUKEE, *August* ,

ASAHEL FINCH sworn.

Direct examination by Mr. MURPHEY:

Q. You are a resident of Milwaukee and have resided here for many years?

A. Yes.

Q. You know about the time the Milwaukee and St. Paul Company was organized?

A. I do.

Q. Some time in the spring or summer of 1863?

A. I cannot swear as to the date.

Q. Do you know Russell Sage?

A. Yes.

344 Q. Do you know Mr. F. P. James?

A. Yes.

Q. Do you know Mr. Cowdry?

A. Yes.

Q. Do you know Alexander Mitchell?

A. Yes.

Q. Do you know the complainants in this case?

A. I know Mr. Graham. I suppose he is one. I don't know who the others are.

Q. Were you director in the St. Paul Company when it was first organized?

A. I believe I was.

Q. Did you know of the recovery of a judgment by Graham and Scott, on which this bill was filed against the La Crosse road, at the time it was recovered?

(Objected to.)

A. I know about a judgment recovered by Scott and Graham. I do not know when your bill was filed.

Q. Can you tell about when the judgment was recovered?

A. That I cannot tell, to speak definitely.

Q. Did you know about the judgment at the time you were director in the St. Paul Company?

(Objected to.)

A. Yes, sir; I knew about the judgment Graham & Scott had.

Q. State whether, at that time, you knew of the pendency of a bill by Graham and Scott in the United States court?

(Objected to.)

345 A. I have already said that I knew they had a bill pending against the La Crosse road.

Q. At the time of your directorship?

A. Yes, sir.

Q. State, Mr. Finch, whether at any time during your directorship in the St. Paul Company, and, if so, when, you were directed by any of the officers of the St. Paul Company, and, if so, whom, to go to Graham and Scott and purchase that judgment with a view to settling that suit in equity.

(Objected to.)

A. I was requested by Russell Sage to go to Mr. Graham—this gentleman (pointing to Mr. Graham)—and make him an offer of $60,000 in stock of the St. Paul Co., for his judgment.

Q. Did you do so?
(Objected to.)
A. I did.
Q. Was it accepted?
(Objected to.)
A. It was not.
Q. Can you tell when that was?
(Objected to.)
A. I cannot state the precise date.
Q. Could you fix about the time, the year for instance?
A. I cannot absolutely. I cannot state what year it was the St. Paul Company was organized. I cannot tell the month, but I think it was in the summer time.

Q. Could you tell when your directorship ceased?
346 A. I cannot tell you that. I think I held it for a year.
Q. Held it for a year?
A. I think so. I do not know but it was longer.
Q. Well, now, Mr. Finch, can you tell whether you was elected director at the first organization of the company?
A. I believe I was. I am not positive of that.
Q. And you think you held it for one year only?
A. Well, I do not know. I may have held it longer. I am very sure I held it for a year.
Q. Do you remember the time or about the time when the St. Paul Company purchased from Kneeland, Ludington, and Mariner the grounds upon which their new depot now is?
A. Yes; I remember that.
Q. Can you state whether this proposition you carried to Mr. Graham was before or after that time?
(Objected to.)
A. Before.
Q. State whether you talked over this matter of the pending suit of Graham and Scott against the La Crosse road with Mr. Sage at that time?
(Objected to.)
A. I reported to Mr. Sage the result of my interview with Mr. Graham.
Q. State briefly what that report was.
A. My report back to him was that I made the proposition and he refused it.
347 Q. Sixty thousand dollars, in the stock of the St. Paul Company, was what you were authorized to offer?
A. Yes, sir; preferred stock.
Q. What percentage was that, do you remember, upon the amount due?
(Objected to.)
A. I cannot state positively, but according to my recollection, I think the judgment and interest at that time amounted to sixty or eighty thousand dollars; that is my recollection.
Q. Was anything said either before you went to Graham, or after your return, in your conversation with Mr. Sage, in respect to this pending suit?
(Objected to.)
A. It is a long time ago. I cannot tell what passed between us about it.
Q. About the pending suit?

A. Yes, sir.

Q. What I desire to know is whether, from anything Mr. Sage said to you, or you said to Sage, that he knew of the pendency of the suit?

(Objected to.)

A. Well, there is no doubt that Mr. Sage knew of the pendency of the suit.

Mr. CARY. I object to that answer.

Q. You have stated that you knew about the time of the recovery of the judgment at law by Graham and Scott against the La Crosse Company, and that you knew of the pendency of this suit

348 in equity which is in fact founded upon that judgment. What I expressly desire to ascertain is whether this money that was to be paid, was to be paid in settlement of this suit or in purchase of the judgment, or what. What was the $60,000 to be paid for?

A. The proposition that I made from Mr. Sage was for the judgments. You say this suit. I do not know whether you mean the suit now pending.

Q. Now, Mr. Finch, I desire to say to you that this suit is the same identical suit that was then pending.

A. That is a question I don't know.

Q. State whether the $60,000 that you were commissioned to offer Mr. Graham was to be simply for his judgment at law or in settlement of the equity suit then pending?

(Objected to.)

A. It was understood that the purchase of the judgment would be an ending of the suit, and that was the object of the purchase. I speak of the suit that was then pending. I don't know anything about this suit.

Q. Why did Mr. Graham not accept the offer that you reported to Sage?

A. He said it was not enough. He wanted more.

Q. Was anything said about the stock not being worth par?

349 A. Yes; Mr. Graham proposed that if they would guarantee the stock to be worth 80 cents on the dollar he would accept it.

(Answer objected to.)

Q. Did you communicate to Mr. Sage that statement made by Mr. Graham?

A. I did.

Q. Did Mr. Sage assent to the proposition?

(Objected to.)

A. He rejected it.

Q. He would not guarantee the stock?

A. No, sir.

Q. State whether this matter of Graham's judgments and the pending suit upon them, of which you say you had knowledge at the time, were ever at any time talked over when the board of directors were in session.

(Objected to.)

A. I cannot answer directly.

Q. Have you any recollection on the subject?

A. Not sufficient to give a definite answer to the question. Your question is as to when the board was in session?

Mr. MURPHY. Yes, sir.

A. I cannot answer that definitely.

Q. I ask you whether the matter was ever talked up in your presence, or to your knowledge with or in the presence of any other of the officers of the St. Paul Company?

(Objected to.)

350 A. Several of the directors knew of this proposition made by Mr. Sage, of which I was the bearer.

Q. Name them, if you please.

A. Well, Mr. James knew it; Mr. Cowdrey also; the president, Mr. Hughes, knew it.

Q. Any others that you think of?

A. Well, there might have been others, but I do not now recollect. I think Mr. Chamberlain knew it.

Q. Do you know whether Mr. Mitchell knew about it?

A. I cannot answer that.

Q. Who was president of the board of directors at the time Mr. Sage gave you this order?

A. I cannot state positively, but I think Mr. Hughes.

Q. What office, if any, did Mr. Sage hold in the board or company?

A. I do not know that he held any, unless it was vice-president. I am not certain; I cannot remember.

Q. Was he not vice-president at that time?

A. That I cannot say.

Cross-examination by Mr. CARY:

Q. Was not this matter of the purchase of Mr. Graham's judgment—was not whatever action that was had upon it, had right away after the organization of the St. Paul Company, and was not the object of the directors of the company to purchase up all the claims to a certain date against the La Crosse Company?

351 A. The St. Paul Company had a desire to wipe out all the litigation. Of course they didn't want to buy the Howard judgment if it was not their interest to buy it, and I suppose the same reason prevailed in their desire to purchase Mr. Graham's judgment.

Q. Had the St. Paul Company at that time any interest whatever in the property in the 4th or 5th wards of Milwaukee where their depot now is?

WITNESS. Did the St. Paul Company?

Mr. CARY. Yes, sir; at the time when you made this offer.

A. I do not think they had.

Q. Was it not before they located their depot?

A. The proposition to Mr. Graham was before the depot was located.

Q. Before there was any negotiations or any intention to purchase the property in the 4th and 5th wards that is now in controversy?

A. I did not know of any intention myself, as director. I did not know of any intention to locate there at the time this offer was made, so far as I am concerned.

Q. Well, there was nothing said in the board of locating in that direction?

A. Not that I recollect; but there might have been; I could not say. I was on the committee to locate the depot.

Q. Was that offer made, so far as you understood it, solely to

352 quieting the title to what was known as the old La Crosse road?

A. As I understood the object of the purchase, it was to get rid of litigation.

Q. Well, to get rid of litigation as to what?

A. That was pending against them; these judgments of Graham's were outstanding against them.

Q. Against what?

A. Against the old La Crosse Railroad; and he, Graham, was in league with the Minnesota Company fighting the La Crosse road.

Q. What I ask you is whether the intentions of the company in authorizing you to make this purchase, if you could, was not solely with a view to quiet the title to the road?

A. I do not know how far it was to quiet the title to the road.

Q. Well, as to affecting the property?

A. The only object was to get rid of litigation with Mr. Graham.

Q. Litigating about what?

A. I have already told you—litigating with Mr. Graham.

Q. I do not know whether you understood me?

A. I have already said that he was in league with the Minnesota Company, and our object was to settle that matter and get possession of the eastern division of the La Crosse Railroad.

353 Q. At that time did either the St. Paul Company or the Minnesota Company have any interest whatever in those lots now in controversy?

A. My opinion is that they did not. I am not clear as to this. As I said a little while ago, I was on the committee to locate these depot grounds.

Q. Mr. Finch, were you attorney and adviser of the St. Paul road at that time?

(Objected to.)

A. My firm, Finches, Lynde & Miller, were attorneys, or a portion of the attorneys. We were retained or engaged by them.

Q. Do you recollect when it was the St. Paul Company located this depot in the 4th and 5th wards of this city?

A. I remember well when it was, but I cannot give you the dates.

Q. Was it not in the summer of 1864?

A. I cannot remember.

Q. At the time they located their depot in the 4th and 5th wards, and purchased the *perfectly* in question, was your firm employed to get up an abstract, and certify the title to the rights in question?

(Objected to as immaterial, not cross-examination and priviledged.)

A. I can answer the question in this way: that so far as getting up the abstract was concerned, they were not employed to do it; but one member of our firm did, as I believe, examine the abstract after

354 it was submitted to us, but we never got the abstract up.

Q. Did your firm, at the time of the purchase of these lots, pass or give a certificate of title as to the property in question?

(Objected to on the ground that it is privileged, and that a written certificate is the best evidence, &c.)

A. I am advised that the only certificate or certification that ever was given was as to the title as appeared by the abstract.

By Mr. MARINER:

Q. As to the title presented by the abstract, you mean?

A. Yes, sir.

By Mr. CARY:

Q. Did your firm pass upon the title of that property after the abstract was prepared upon which the purchase was made?

A. I don't know.

Q. Did you ever advise or inform the St. Paul Company that there was any suit pending affecting the title of the lots in question?

A. I have no recollection of giving the information direct myself, but the St. Paul Company did know of the existence of the Graham judgment, and did know of this litigation.

Q. Do you mean to say that the St. Paul Company knew of the existence of this creditor's bill affecting the title of these lots in question?

355 A. I have not said so. I alluded to the litigation existing prior to the location of the depot that I have already testified about.

Q. Will you state what you mean by the litigation?

A. I mean that there was in existence a suit pending against the old La Crosse road, or the eastern division of it, between Milwaukee and Portage City, and in which litigation Mr. Graham was identified. That is the litigation I refer to.

Q. Now, I wish to ask you distinctly whether the St. Paul Company knew of any litigation affecting the lots in question prior to the time or at the time of their purchase of them?

A. You are asking me a legal question, which I do not feel competent to answer. I do not know whether this litigation affected those lots; that is a question of law. I do not know.

Q. You have just answered that the St. Paul Company did know of this litigation.

A. Yes, sir; and I say so now.

Q. Will you explain what you mean by "this litigation"?

A. I have explained it two or three times. There was a suit pending for the possession of the eastern division of the La Crosse road, in which Mr. Graham was interested. That is what I mean by this litigation. Your suit pending here now I don't know anything about. I cannot tell anything about that.

356 Q. Is that what you have referred to as this litigation all through this examination?

A. Why, certainly it is; no other that I know of. I don't know when this suit was brought that you are fighting now.

Q. Who were the parties that were interested in that litigation that you speak of besides Mr. Graham?

A. Well, I don't know who else was in it.

Q. Well, you know, generally, some of them. Who was their lawyer?

A. Mr. Carpenter.

Q. Who were the chief men here attending to it?

A. The chief men here attending to it were Mr. Flemming and Mr. Graham.

Q. Was Moses Kneeland one of the parties that was engaged in the litigation that you referred to?

A. I don't know whether he was or not.

Q. Did he affiliate or counsel with them?

A. I cannot tell you about that. My impression is that at one time he had something to do with it, and then again he hadn't; but I do not know certainly.

Q. You are acquainted with the depot grounds of the St. Paul Company on the south side of the Menomonee River, in the 4th and 5th wards?

A. Yes.

Q. Were these grounds, or any portion of them, any part of the eastern division of the La Crosse road?

357 A. I do not know.

Q. Did you so understand them?

Mr. MURPHY. I object to what he so understood. The record will show about that.

A. I have no objection to telling you what I understood about it. I understood that at one time the La Crosse road did own them.

Q. At the time of this litigation?

A. I cannot tell you who owned them then.

Q. At the time you speak of this litigation about the eastern division of the La Crosse road, did you understand that at that time that it affected any property on the south side of the Menomonee River?

(Objected to.)

A. I do not know. I cannot answer the question.

Q. The question is, did you understand that at that time it affected any property on the south side of the Menomonee River?

A. I do not know that I had any opinion about that litigation.

Q. Were you afterwards one of the board to locate the depot of the St. Paul road on the south side of the Menomonee River?

A. Yes, sir; I was.

Q. Were you engaged as a director in the purchase of the property now occupied by the St. Paul Company down there?

A. I was engaged as a director in the company.

Q. In that business?

358 A. I had no authority to purchase anything there.

Q. Well, to investigate and inquire about the matter?

A. I was a director, and on the committee to locate the depot.

Q. Did you understand at the time you were locating the depot that any of that property belonged to the La Crosse road?

A. I did not suppose that it belonged to the La Crosse road. I did not know anything about it.

Q. Had you any idea that it belonged to the La Crosse road?

A. I do not know what my ideas were.

Q. Have you any recollection that you had any such idea?

A. I do not recollect now that I had any such.

Q. Did you at any time know what was paid for that property?

A. Yes; I knew at the time.

Q. Can you tell now what the price was?

A. No; I cannot tell.

Q. Did the St. Paul Company pay what was considered at that time a good round price for the property that they purchased?

(Objected to.)

A. I can only state my own judgment, and my opinion was they

359 paid a fair price for it at the time.

Q. Paid all that it was worth, or fairly worth?

A. That was my impression at the time.

Q. You have stated that you have been a long resident of Milwaukee.

A. Yes.

Q. Thirty years or more?

A. Well, most thirty-four.

Q. You had been, previous to this, for a long while a director of the Mississippi company?

A. Yes, sir.

Q. Had you been engaged in the purchase of a good deal of the property of the Mississippi and Prairie du Chien Railroad Company on the opposite bank of the Menomonee River?

A. Yes, sir; the purchase of some 75 or 100 lots that I had charge of.

Q. So that you had large experience in ascertaining the value of property down there?

A. I had that experience; I was the committee to purchase it; I had the entire charge and bought some hundred lots.

Re-direct by Mr. MURPHY:

Q. I want a more accurate definition of the words "this litigation;"

I understood you in your direct examination to state that you had carried the proposition to Mr. Graham to buy the judgment which
360 he held against the La Crosse road, and on which you then understood a suit in equity was pending; that purchase was to settle the suit and also to remove the lien of the judgment?

A. Yes, sir.

A. I understood you, furthermore, that Mr. Sage, whom you thought was vice-president, and Mr. Hughes, the president, and Messrs. James, Chamberlain, and Cowdry, knew of the existence of that suit then pending, and of this judgment; did I understand you aright?

Mr. CARY. I object to this question and the preceding one, as improper, as leading, and a pretended repetition by the counsel of what he claims the witness testified to, for the purpose of putting it in his own language in the testimony.

A. Yes, sir.

361 Q. Now, then, did you mean to be understood in your cross-examination to say that the St. Paul Company did not know of the existence of these complainants' judgments and the equity suit that you say was then pending?

A. I have not pretended to say otherwise; I believe they said so.

Q. Didn't the St. Paul Company know at the time you carried that proposition to Mr. Graham of the existence of Mr. Graham's judgment, and of the pendency of that suit in equity?

A. I was a director of the St. Paul Company, and the parties whom I have already named were aware of this judgment of Mr. Graham and of the pendency of a suit of some kind; I do not know what that suit was sufficiently able to describe it.

Q. What court was it in?

A. In the Federal court.

Q. For this district?

A. For the district of Wisconsin.

Q. State whether you understood that pending suit to be an action in equity or a suit in law.

362 A. I was on the chancery side of the court.

Q. Whom did you understand it to be pending against?

A. I cannot answer that question now; I cannot say who the parties were.

Recross-examination:

Q. Did you at that time understand that that suit affected in any way the St. Paul Company except so far as it sought to subject the property of the old La Crosse road to the payment of those judgments?

A. Well, I cannot answer what I thought; the only thing that is in my mind was that the directors were interested in getting that judgment out of the way, so as to relieve the St. Paul Company from litigation; that is the most I remember about it.

By Mr. MARINER:

Q. Did you understand Mr. Fleming to be a party interested in that litigation?

A. He was interested in the litigation.

Q. And is that the litigation you have referred to in your answers?

A. I believe that I have already answered that; I referred to any litigation existing at that time in which the St. Paul Company as successor of the La Crosse Company was in any wise interested.

363 Q. I do not think you distinguish on a point that we would

like you to; you have testified that you thought the St. Paul Company knew of the existence of the suit in equity on the part of Mr. Graham?

A. I said a suit in which Mr. Graham was interested.

Q. Now there was more than one suit in which Mr. Graham was interested at that time, so that it becomes important, in distinguishing between these cases, that you should speak as to what was the object of the suit of which you say the St. Paul directors had knowledge; was the suit which you say they did know, one touching the eastern division of the road, or was it a suit touching some property in the 4th ward on which the St. Paul depot was subsequently located?

A. I cannot answer that question in any other way than this: I cannot state how many suits there were pending at the time, but the object of the proposition of Mr. Sage was simply to end all litigation with Mr. Graham; now I do not know anything about the number of suits; I knew of one suit for the recovery of the eastern division in which Graham was interested, which Fleming managed, and in which Carpenter was attorney.

364 Q. Is that the suit you refer to when you use the words "this litigation"?

A. I cannot answer that any more definitely than I have already.

Q. You can say yes or no to that?

A. I do not know whether it included that or not.

Q. Do you know that there was any other?

A. I cannot state now, whether I had any such knowledge. I am speaking now from the present stand-point.

Q. You had knowledge that Fleming had 80 bonds under the Helfenstein mortgage that was also prosecuted?

A. I do not know anything about that; if I did I know I have forgotten.

Q. Have you any knowledge that the directors of the St. Paul Company or any of them had any knowledge of the pendency of a suit brought by Mr. Graham against Mr. Kneeland, Mr. Ludington, and myself to subject this property in the 4th ward, upon which the depot of the 4th ward was subsequently located, to the payment of his judgments?

A. I do not know anything about such a suit myself now.

Q. Do you remember that at the time you had any knowledge of such a suit?

365 A. I have no recollection of it; I might make an examination and find out about it.

Q. Did the St. Paul Company or the directors have any knowledge of this suit, so far as you know, except through you?

WITNESS. What suits?

Mr. MARINER. Of any suits where Graham, or Graham or Scott or Flemming were plaintiffs

A. I think there are suits between the St. Paul Company or in which the St. Paul Company was interested and Graham, in which my firm have never been employed. I only know that from information.

Q. Were there at that time?

A. I do not recollect. At what time do you refer?

Q. At the time you made the proposition to Graham.

A. Yes, sir; there were.

Q. What were they?

A. There was a suit which Mr. Carpenter was prosecuting. I do not know what legal firm was interested in that. I cannot tell now.

Q. A suit which Mr. Carpenter was prosecuting against whom and for whom?

A. For the Minnesota Company and Mr. Graham.

Q. Against whom?

A. Against the old La Crosse Railroad Company.

Q. What was that suit for?

A. I cannot tell you the precise nature except it was ulti-
366 mately to acquire possession of the eastern division of that road.

Q. Was there any other suit pending in which Graham was interested or complainant & which the St. Paul Company had knowledge, and which knowledge they didn't get through your firm?

A. I don't know of any.

Q. Are you able to say now, that the directors of the St. Paul Company at the time you carried this proposition to Mr. Graham knew of the existence of this suit against Kneeland, Ludington, and myself & in favor of Graham & Scott?

A. I do not know as they did.

Q. Did the St. Paul Company, to your knowledge, at the time you carried that proposition, know of the existence of a suit by Graham and Scott against the La Crosse Company and Mariner, Kneeland, & Ludington to subject the property in the 4th ward of the city to the payment of Graham and Scott's judgment?

A. You ask whether I can state whether the directors knew that; I cannot answer that. As you describe the suit I cannot say that they had.

Q. But you have answered that they did know that there was a suit pending to get possession of the railroad.

A. Yes, sir.

Q. You answered that you are unable to give the object of the
367 suits in which Graham was interested or the exact title of the causes, but that it was to settle one suit pending on the chancery side of the United States court of the district of Wisconsin. Did you understand that in that suit Graham or Graham and Scott were plaintiffs?

A. I cannot say who were the parties to the suit.

Q. Can you say whether you understood them to be plaintiffs?

A. I cannot.

MILWAUKEE, WIS., *August* 8, 1873.

Parties appeared, N. S. Murphey, for complainants, John W. Cary, for defendant, St. Paul Railway Company.

ASAHEL FINCH recalled by complainant.

Q. Do you want to make any additions to or explanations of your testimony?

A. To all my answers to several questions which may or may not have been written out correctly I desire to add as follows, when I spoke of litigation sought to be wiped out I meant all litigation pending, in which Graham and Scott had any interest against the La Crosse Company, and in which the St. Paul Company was interested as suc-
368 cessor to the La Crosse Company. I also add the suit described in the caption of this deposition was instituted against all the defendants therein named except the St. Paul Company in 1860; the St. Paul Company was not made a party to that suit until September 14, 1868; I also add that neither myself or my firm, to my knowledge, were ever employed or retained for any of the defendants in the suit

described in the caption of this deposition, either before or after the St. Paul Company were brought in as defendants; that John W. Cary appeared and filed the answer for the St. Paul Company, and so far as I know is the only person who has defended the St. Paul Company in said suit, and who, as I suppose, has the exclusive charge of the defense; I further add that when I made the proposition from Sage to Graham this suit as originally brought was pending, though the St. Paul Company was not a party thereto; at the time I made the proposition to Mr. Graham and at the time the depot was located, to the best of my knowledge and belief, there were no suits pending against the St. Paul Company in which either myself or my firm were employed.

Q. Does that embrace all the explanation you wish to add, Mr. Finch?

A. Yes, sir.

369 Recross-examination by Mr. Carey:

Q. After the St. Paul Company was made a party to this suit was not your firm consulted on behalf of the St. Paul Company, and did they not advise with me as to the answer which should be put in to the defense of the suit, and continue to consult with me for at least three years after the St. Paul Company was a party?

(Objected to by complainant as immaterial.)

I do not know anything about it. I only know, or at least am so informed, that our office has not been consulted at all in relation to the progress of this suit for the past two or three years, and I am also authorized to state that we never received any retainer in the suit. I am so informed; I do not know it of my own knowledge.

Q. At the time the St. Paul Company was brought into this suit and up to the commencement of 1872 was not your firm retained by the St. Paul Company generally at an annual retainer of $2,000 a year, and which was paid regularly up to that time?

(Objected to as immaterial by complainant's counsel.)

A. We were so retained up to some time—the precise time I cannot state—with the understanding that we were to charge for all
370 business that the company put in our hands to do.

Q. In addition to the $2,000?

A. Yes, to charge for what services they requested us to perform. I do not know of my own knowledge of any one being requested to perform any service for several years after the expiration of our annual retainer.

Q. Don't you know that I consulted with your partner, Mr. Lynde, with regard to this suit, and our liability about it from the time we were made parties to it until the beginning of the year 1872?

(Objected to by complainants' counsel as immaterial.)

A. I do not know.

Q. Do you know what the bill of complaint in this case sets forth?

A. I do not. I never read it.

Q. At the time you were directed to make the offer to Mr. Graham for his judgment was not all the knowledge that you or the St. Paul Company had in regard to it just this: that Mr. Graham had a judgment or judgments against the La Crosse Company which were a lien upon the railroad in which the St. Paul Company was interested; that he was a defendant to the suits that were being prosecuted in the
371 interest of the St. Paul Company to obtain the title to that railroad, and was resisted, and that he was attempting to enforce his judgment against the property of the La Crosse Railroad by a creditor's bill, and that knowledge you had from general report and information?

A. I cannot answer that categorically, but I can answer the latter part in your own language, that all I knew about that matter was that he was litigating with the old La Crosse Company, that there was a bill pending which Fleming had charge of, and that he affiliated with him in that suit, and that he had a creditor's bill against the La Crosse Company, but what he was attempting to reach by that bill I never knew.

Q. Did you at any time know, until after the St. Paul Company had purchased the lots in question in the 4th ward, that Graham had any suit seeking to reach those lots or the title thereto?

(Objected to because the witness had already testified that he knew of the pendency of this suit, which was in fact directed against those lots, and it is immaterial whether he knew they related specifically thereto or not.)

A. My impression is that I did not, but it is only an impression.

Redirect examination:

Q. Were you, to your recollection, director of the St. Paul Company for more than one year?

A. I cannot remember.

372 Q. Can you fix the time or about the time that you carried this proposition to Graham to pay the $60,000 in settlement of this suit by Sage's direction?

A. I cannot fix any date. It was after the organization of the St. Paul Company, and while, I think, I was director.

Q. You say you think this was during your directorship and after the organization of the St. Paul Company. I think you stated the other day that it was also before the St. Paul Company purchased these lots in question from Kneeland, Mariner, and Ludington?

A. Yes.

A. FINCH.

MILWAUKEE, WIS., *August* 8, 1873.

John W. Carey, in behalf of the complainants, makes the following statement, which is agreed, the records of the St. Paul Company show and that the fact is:

The company was organized by filing articles of incorporation May 5, 1863. The list of directors named in the articles of incorporation to hold until June, 1865, were nine directors, as follows: David M. Hughes,

373 N. A. Cowdrey, Asahel Finch, Horace Galpin, F. P. James, Wm. Goold, Isaac Seymour, George Smith, William H. White; David M. Hughes, president, & William H. White, vice-president. In the month of June following the board of directors was increased to 13, and George W. Rogers, Selah Chamberlain, Alexander Mitchell, and Russell Sage were elected as directors, constituting with the other nine the full board of thirteen to hold until June, 1865.

June 25, 1863, William H. White resigned the office of director and of vice-president.

June 25, 1863, A. Noxon was elected director, & Geo. W. Rogers vice-president, to fill vacancies caused by resignation of W. H. White.

Nov'r 14, 1863, Geo. Rogers resigned his position as vice-president, & Russell Sage was elected to fill vacancy.

Nov'r 12, 1863, Washington Hunt was elected a director to fill vacancy caused by death of Isaac Seymour.

June 21st, 1864, D. M. Hughes resigned the office of president.

July 1st, 1864, Russell Sage was elected president & resigned the office of vice-president.

Nov'r 14, 1864, Wm. Gould resigned his office as director, & Walter S. Gurnee was elected to fill vacancy.

374 May 4, 1865. N. A. Cowdry was elected vice-president to fill vacancy.

June 28, 1865, Directors & officers elected this day: Alexander Mitchell, president; Russell Sage, vice-president; S. Chamberlin, N. A. Cowdry, Horace Galpin, F. P. James, Washington Hunt, D. M. Hughes, W. S. Gurnee, John W. Cary, S. S. Merrill, E. B. Wesley, Daniel Well, j'n'r.

375 Jan'r'16, 1866, Directors & officers elected this day: Alex. Mitchell, president; Russell Sage, F. P. James; W. S. Gurnee, vice-president; N. A. Cowdrey, H. C. Stimpson, Washington Hunt, E. B. Wesley, Isaac Scott, John W. Cary, S. S. Merrill, S. Chamberlain, Julius Wadsworth.

W. S. Gurnee was elected vice-president July 6, 1866.

MILWAUKEE, WIS. *August* 8, 1873.

JOSHUA STARK, being duly sworn, testified as follows:

Direct examination by Mr. MURPHEY:

Q. You reside in the city of Milwaukee, and are a lawyer by profession?

A. Yes, sir.

Q. How long have you resided here?

A. Twenty-two years.

Q. Were you ever a member of the law firm of Palmer and Stark?

376 A. I was a member of that firm from December, 1857, for some four or five years.

Q. Have you lately seen the judgment roll of the circuit court of Milwaukee County in the case of the Brideport Savings Bank against The La Crosse and Milwaukee Railroad Company and others, for the foreclosure of a mortgage, commenced in the fall of 1858?

A. I believe I have; but I have not examined the record very carefully.

Q. I see by that record that Lawrence G. Graham and Donald D. Scott, complainants in this cause, were named as defendants in that cause, and that an appearance was entered therein in their behalf, and the admission of notice of application for judgment made by Palmer and Stark, as attorneys for Graham and Scott. I ask you whether you ever had any retainer in that cause, or authority to enter such an appearance, by either Mr. Graham or Mr. Scott, so far as you are personally concerned?

[Objected to by Mr. Mariner.]

A. I have no personal knowledge of a retainer of the firm of Palmer and Stark by Graham and Scott, or either of them, in that foreclosure suit.

Q. Have you any recollection of the authority to waive the service of process on them, or to appear for them, derived from them or either of them?

(Objected to.)

A. I have not.

Q. Have you any knowledge of such authority or retainer extended to Mr. Palmer in that matter?

377 (Objected to.)

A. I have no present recollection upon that subject.

Cross-examination by Mr. MARINER:

Q. The firm of Palmer and Stark recovered a judgment for Graham and Scott against the La Crosse and Milwaukee Company, did they not?

A. Yes, sir.

Q. When?

A. I have not looked at the docket of the judgment, and I cannot recollect the precise time. I think it was in 1858 or 1859, I cannot remember which.

Q. One was September 21, 1858, and the other was November 25, 1858?

A. I think those are the dates.

Mr. Stark subsequently said:

I wish to state that the admission of service and the entry of appearance for Graham and Scott in that foreclosure suit is signed in the name of the firm of Palmer and Stark in the handwriting of H. L. Palmer of that firm.

JOSHUA STARK.

MILWAUKEE, WIS., *August* 5, 1873.

Parties appeared as follows: N. S. Murphey for complainants; E. Mariner for defendants, St. Paul Company and Ludington.

MATT. H. CARPENTER sworn for complainant.

Direct examination:

378 Q. Do you know anything about this case; that is to say, did you originally bring this suit?

A. I drew and exhibited the bill originally, and had charge of it up to a certain time.

Q. To the year 1868?

A. I should think so.

Q. I observe by consulting the records that at one time you entered a discontinuance in this cause as to the defendant E. Mariner. Will you state to the court briefly the circumstances and causes which induced you to enter that discontinuance?

A. I will premise by saying that this suit was part of a complicated litigation which lasted about ten years in the State and Federal courts and involved a great variety of proceedings, so that it is next to impossible for me to remember with accuracy any particular transaction in it, but, to my best recollection and belief, sometime in 1862 an arrangement was made between Graham and Scott and the Milwaukee and Minnesota Railroad Company by which upon certain terms and conditions that company were to become the owners of the Graham and Scott judgments to enforce which this bill was brought. After that contract was entered into I regarded the Minnesota Company, which was represented by Fleming, as managing and controlling this as a branch of the litigation through and by which they hoped to obtain possession of the road, and my impression is that I was directed by Mr. Fleming to

379 enter the discontinuance as to Mr. Mariner, and it is my impression that subsequently I entered a discontinuance as to Kilbourn for the reason that, as I understood it, the interest represented by Mariner was the interest which I supposed belonged to Kilbourn when this suit was brought. Having discontinued it as to Mariner I supposed the discontinuance as to Kilbourn followed as a matter of course.

Q. You were counsel alike for Graham and Scott and for the Minnesota Company which was represented some time by Flemming?

A. Yes; I have no recollection of consulting Graham and Scott, or either of them, in regard to that discontinuance; indeed, I regarded Fleming as controlling it after that contruct was made.

Q. The nature of that arrangement was briefly what—that contract you referred to?

A. It was that the company were to pay Graham and Scott a certain sum, I think $7,500 within a certain time, after the company should obtain possession of the road, and the balance of the judgment at intervals of six months, I think $10,000 in each six months, until the whole amount was paid, and the company was to become the owner of the judgment so far and as fast as they made such payments. I should add, that the company never complied with that contract, or paid anything under it, and never did become the owner of the judgment or any part of it.

380 Q. Now, in taking for granted, as you say you did, that Flemming had a right to control the whole litigation, I will ask you whether that impression or inference of yours was based upon this contract?

A. Entirely.

Q. Which, you say, was never in fact carried out by the Minnesota Company?

A. No, sir.

Q. Flemming was an officer in the Minnesota Company as its agent or what?

A. He was all that. He was an officer of the company; he was agent of the company; he was the grand Tycoon in the whole litigation on its behalf and in its interest, and I followed his directions in everything. I was originally retained by Flemming as a stockholder of the company before I had any right to appear for the company, while Russell Sage was its president, and afterwards, when Flemming and his associates by purchase of stock obtained a controlling interest in the corporation and elected themselves officers, I appeared for the company.

Cross-examination by Mr. MARINER:

Q. Was that agreement in writing between Graham and the railroad company?

A. It was.

Q. Do you know where it is?

A. My impression is that the original was left with me, but I have been unable to find it. I am not certain that it was left with me;

381 that is my impression only.

Q. Was there any duplicate or copy of it?

A. My impression is that either my clerk or myself made a copy of it and delivered it to Graham. Mr. Graham now has what purports to be a copy of that copy, and I believe it is so, and I believe it is a copy of the original. I understand that Mr. Graham sent the copy which I gave him to Minnesota, and it was filed there in the court. He afterwards wrote to Mr. Gilman, his solicitor at St. Paul, for that copy, and Gilman replied to him that the copy was filed in court, and he sent him a copy of the copy.

Q. How long did that litigation between the Minnesota Company and the La Crosse Company and St. Paul Company last?

A. Well, some ten years; I cannot say precisely.

Q. Who had charge of it on the part of the Minnesota Company?

A. I had.

Q. The whole charge, did you not?

A. Yes, substantially.

Q. Who were interested with the Minnesota Company; what other parties than the company itself; that is, who took their side of the litigation besides themselves?

A. Nobody that ever I heard of. So far as I recollect, everybody took the other side.

382 Q. Well, Graham and Scott were on that side of the litigation, were they not?

A. They were after that contract; up to that time they were paddling their own canoe.

Q. From that time Graham and Scott and the Minnesota Company worked together, did they not?

A. Yes.

Q. Did Moses Kneeland take any part in that litigation or in advising or consulting about it?

A. I don't remember that he did.

Q. Did he ever consult with you about it?

A. Not to my recollection.

Q. How actively was that litigation conducted in that ten years?

A. As I understand, actively; it was prosecuted actively until it was ended.

Q. It was a continual scrim'age, was it not?

A. Continual scrim'age on all parts.

Q. And took a great deal of your time during all that ten years?

A. Most of it.

Q. Do you know anything of the transaction of the execution of this stipulation discontinuing this case?

A. I do not. I simply see from examining the record that there is a præcipe in Mr. Mariner's handwriting directing the discontinuance as to him, and signed by me. I do not recollect when or where

383 or under what particular circumstance that paper was executed, but my impression is that I was directed by Flemming to discontinue as to Mariner, and I presume that afterwards when Mariner presented the paper to me I signed it, but I do not recollect the time when, the place where, or the circumstances under which the paper was signed.

Q. You had, probably, full knowledge of whatever negotiations there were that led to that discontinuance?

A. I do not think I had. Whatever led to it took place between Mr. Mariner and Mr. Flemming, and the result was announced to me. I have no recollection about it except this: I have a sort of vague, indefinite half recollection, or whatever you may please to call it, that Flemming told me that Mr. Mariner was to do something for him or for the company with regard to tax-titles on the depot grounds in the second ward, but I was no party to the negotiations and had no knowledge of the terms of them except as the result was communicated to me.

Q. Have you any positive recollection of Mr. Flemming directing you to do such a thing as to make this discontinuance?

A. I think he did.

Q. Have you any positive recollection of it?

384 A. Well, my recollection is as positive about that as about any one thing in the whole litigation. I know that Mr. Graham did not direct me to do it; I would not have done it without somebody's direction, and I believe that Mr. Flemming directed me to do it.

Q. Who drew the contract between Mr. Graham and the Minnesota Company?

A. My impression is that I drew it myself.

Q. Were you present at the time it was negotiated or bargained?

A. I do not know what negotiations there were about it. At least my recollection is that Mr. Flemming and Mr. Graham came to my office and told me what had been agreed upon, and wanted me to draw a contract, and that I did so. Whether the original contract is in my handwriting or whether my draft was copied by my clerk I do not recollect, and I may be mistaken as to having drawn the contract at all, but that is my impression.

Q. Did you ever hear anything about any contract between Graham and Kneeland?

A. No; not that I now recollect. I have seen to day what purports to be a copy of such a contract, but I have no recollection of
385 having heard of it until to-day. I may have known of it or I may even have drawn it, but it is entirely out of my recollection if I did.

Q. In the progress of this litigation there were a great many negotiations between all the creditors of the company, were there not?

A. An immense number.

Q. Mr. Flemming acting for the railroad company on one side?

A. And everybody else on the other.

Q. Now, was Mr. Flemming constantly consulting with you in respect to them?

A. Yes; I think he was.

Q. For a great part of the time he was in your office more or less every day?

A. Yes.

Q. Graham and Scott had a number of negotiations about it, had they not?

A. I think they had.

Q. Were they in constant consultation with you?

A. Not as constant as Flemming, especially after the contract between the company and Graham. Graham then took a back seat, so far as I now recollect. I saw him occasionally. He came to inquire how things were progressing, and, so far as I now recollect, he did not presume to give directions. I thought he held a secondary place, having been provided for by the contract.

386 Q. Up to that time he had been actively prosecuting this suit?

A. Yes.

Q. Do you know whether anything was done between the time of the making of this contract and the time of making this discontinuance as to me in this case?

A. I cannot say without examining the record whether there was or was not.

Q. The contract you saw this morning I was not a party thereto?

A. I cannot say as to that.

Q. Do you recollect my insisting to you that this suit should go on and be prosecuted; that there should be an end to it in some way or other?

A. I do not. I remember an immense amount of such talk in regard to that Watertown suit, and there may have been in regard to this; but I do not recollect it.

Q. Don't you recollect my stating to you that Kneeland and Ludding-

ton had a contract with Graham about the matter and I had none, and I wanted the matter at an end?

A. I do not remember any such thing. I do not remember of ever hearing of the contract of Kneeland until to-day; and yet, as I
387 say, I may have drawn it, but it is entirely out of my mind if I did so. I should say in that connection that during all that time I was driven to death, doing at least three men's work; working in my office continually until one, two, and three o'clock at night, day after day, week after week; a great deal of negotiation took place, and these conversations that took place from time to time I cannot recal', and I do not profess to remember any of them accurately.

Q. Have you any idea that you executed that discontinuance without authority at the time for executing it?

A. I certainly did not execute it without supposing I was justified in so doing. Mr. Mariner didn't give me anything for executing it. I know I didn't do it out of friendship for him, and my present recollection is that I did it by Mr. Flemming's direction.

Q. You are satisfied that it was executed upon some agreement which was entered into between myself and some person party to the suit, either Mr. Flemming or somebody else?

A. I cannot speak as to that at all. I have said that Mr. Flemming told me, as my present recollection is, to discontinue that
388 suit as to Mr. Mariner, and that he was moved to do that because Mr. Mariner had done or was to do something in relation to tax-titles, but what, I did not understand or care enough about it to understand. I had griefs enough of my own without going into tax-titles at that time.

Q. Was not that matter of looking after tax-titles a subsequent matter?

WITNESS. Subsequent to the discontinuance as to you.

Mr. MARINER. Some considerable time subsequent—some six, eight, or twelve months.

A. Well, if it was, it was different from my recollection of it. My impression is that it was the inducement to Flemming to order the discontinuance.

Q. When did the Minnesota Company get possession of the road?

A. I should say from my recollection, and I may be two or three years out of the time, that it was in January, 1864.

Q. Was not this agreement between Fleming and me to examine and get up the tax-titles after they got possession of the road?

A. It may be so; but my impression is otherwise. I cannot fix the date of any of those transactions with any certainty whatever.

389 Q. Supposing it was at a later date and you should be satisfied that it was, would that fact have any influence in changing your mind as to your supposition that you made that discontinuance by direction of Mr. Fleming?

A. No, none whatever; but it would change my mind as to the inducement Fleming had to order it. I know this positively, that I never discontinued that suit as to Mr. Mariner as a favor to him; I know there was never any consideration moving from him to me nor to Mr. Graham to my knowledge.

Q. To you, you mean?

A. Yes.

Mr. MURPHEY. Or to your client?

Mr. CARPENTER. Or to my client.

Mr. MARINER. You have just stated there was.

Mr. CARPENTER. I mean to Mr. Graham.

Redirect by Mr. MURPHEY:

Q. Is it not true that after this contract was made with the Minnesota Company by Graham and Scott that Mr. Graham practically abstained from any active direction in the management of the litigation?

A. I think he did.

Q. And that it was practically controlled by Fleming under the contract, as you expected that would ripen into the purchase of the Graham judgments by the Minnesota Company?

390 A. Yes.

Q. Have you any recollection of the time or about the time that you first understood from Mr. Graham that he knew of the discontinuance of this case as to Mr. Mariner; whether it was before or after I came into this case; have you any recollection about that?

A. I have no recollection of Graham ever speaking to me about it. I think I recollect you asking me about it and my talking with you about it, but I do not recollect what the consideration was.

Q. Was not that after I came into the case as solicitor for the plaintiff?

A. Certainly, certainly; I do not think that anything ever passed between Graham and Scott and myself as to discontinuing as to Mariner.

A. I see that the record shows that Selah Chamberlain was originally a party to these proceedings, but afterwards it was discontinued as to him. State briefly as to that.

A. Making the same remark in regard to my imperfect recollection as to the order of the different steps in this matter, I will say that my present impression is that my motive for discontinuing the suit against Chamberlain was to bring another suit in favor of Graham and Scott against Chamberlain alone for the purpose of testing the liability of Chamberlain for the receipts and proceeds of the road under his

391 lease, and I discontinued as to Chamberlain so that he could not plead this suit in bar.

Q. And you did bring such a suit in the State court?

A. No; that suit was brought in the district court of the United States and finally went to Washington and we were defeated in it, and my impression is that I discontinued this other suit so that it could not be pleaded in bar to that.

Mr. MARINER. Can you remember my making to you a request that this suit should be discontinued not only as to myself, but as to Kneeland and Ludington as well?

A. I do not remember it, and yet you may have done it a dozen times.

Q. Can you remember stating to me at any time that you were willing to discontinue this suit, that I claimed it as a matter of contract between Graham and Scott and Kneeland, Ludington and myself?

A. I do not remember any such thing, and yet my not remembering it is no evidence that it did not take place, as I tell you.

Q. I will ask you further and see if I cannot recall anything to your mind; do you remember saying, in answer to a request of mine to discontinue the case, I claiming that it was agreed to be done, that you were not willing to trust Kneeland and Ludington to do what I

392 said was their side of the stipulation, and for that reason you would not discontinue?

A. I do not remember of ever passing one word with Mr. Mariner on the subject of discontinuing that suit as to him—not a word; and if I had

not seen the præcipe for the discontinuance in his handwriting, signed by me, my recollection would be that I discontinued it in open court by Fleming's direction.

Redirect by Mr. MURPHEY:

Q. If there had been any conversation between Graham and Scott and Mr. Mariner for the discontinuance of this suit as to Mr. Mariner, and that had been communicated to you as Mr. Mariner's question indicates, would you not probably have remembered that fact?

A. I cannot say that I should; I think it is very doubtful. Ten years' conversation with forty men upon various points of that litigation would be very difficult to remember now.

MATT. H. CARPENTER.

Adjourned to Thursday, August 7th, 1873, at two o'clock p. m.

393 MILWAUKEE, WIS., *August 8th*, 1873.

E. MARINER recalled.

By Mr. MURPHEY:

Q. State whether in 1855, 1856, or 1857 you were the legal adviser of Byron Kilbourn.

(Objected to.)

A. In a good many matters I was. I was not the only legal adviser that Mr. Kilbourn had in that time; and in 1855 and 1856 I was not the principal adviser that he had, and I think that is true of 1857.

Q. Who was his principal adviser in 1855?

A. I cannot tell; I do not believe if he was here he could tell.

Q. If you cannot tell, and you were his adviser for some purpose, can you be positive that you were not his principal adviser in 1855; and, if so, how do you know that fact?

A. Because Mr. Kilbourn advised with a good many men at that time.

Q. When I speak of adviser, I mean legal and professional adviser.

A. That is what I mean. I would not wonder if Mr. Kilbourn paid in the years 1855, 1856, and 1857 a dozen different attorneys.

Q. I do not ask for what he paid or for your impression about it, but I desire knowledge. Do you know of anybody else than yourself
394 during those years being his principal adviser professionally any more than yourself?

A. Well, I cannot recal' those things accurately at this lapse of time. I cannot tell certainly who was Mr. Kilbourn's principal adviser in 1855. I am sure that I was not, and I am equally sure that I was not in 1856, and in 1857 I am equally sure that I was not. I would not say that I did no business for Mr. Kilbourn in 1855 and 1856. I think it likely I did.

Q. What do you mean by principal adviser?

A. I understand that term to define the counsel to whom a man goes with his business generally.

Q. Can you name any lawyer that in 1855 and 1856, then or now in the city of Milwaukee, with whom Mr. Kilbourn during those two years was in the habit of consulting any more frequently or generally than he consulted you?

A. I have already stated that I would not say positively that he consulted me in the year 1855 or in the year 1856. I think he did, and with as much positiveness as I could say that he consulted me I would say that

he consulted Mr. Finch, Mr. Palmer, General J. H. Paine, Mr. Ryan, and Mr. Waldo.

Q. Do you mean he consulted them in regard to his private business or the business of the corporation he represented?

395 A. Well, both; Mr. Kilbourn was a very peculiar man, and he would very frequently do very important things on his own idea of what was right or wrong and then pick up the first lawyer he met and get his opinion, and perhaps retain him. So that it is very hard to say who was his principal counsel until I am satisfied I became his principal counsel.

Q. Can you testify, Mr. Mariner, to-day positively that you did not do law business for him and consulted with him professionally in the year 1855?

A. I have already stated that I think I did do professional business and was consulted by him in 1855, but I cannot positively say I did.

Q. The same of 1856?

A. I presume so.

Q. Of 1857?

A. I presume so. In 1857 I would be sure of it, and yet if you would ask me what it was I could not tell you.

Q. How long have you lived in Milwaukee?

A. Since June, 1850.

Q. How long have you known the lots described in the complaint in this action?

A. Well, the first familiarity I can recal' in regard to them was in 1853.

Q. And you have had a general knowledge of them since?

A. Yes.

Q. Did you own in 1853 any lots in the neighborhood of where

396 these lots were, or have any interest in any such lots?

A. I cannot tell. I would not like to say that I had not, and yet I am not sure now that I had. Twenty years is a good while to remember dates accurately.

Q. Do you think you had in 1855?

A. I think I had, yet I would not be positive.

Q. Do you think you had in 1856?

A. Yes; as late as that I would speak quite positively.

Q. Where were they?

A. Some were across the river. It is possible that in 1853 I had an interest in some lots right in the vicinity of these lots.

Q. Do you think you did in 1854?

A. I got the interest on both sides of the river at the same time, and I cannot now fix the date. It is possible that I did not get them in 1855, and it is possible I got them as early as 1853.

Q. Have you looked over your answer that you originally put in?

A. I looked at it two or three minutes this morning.

Q. That answer being filed in 1861 the facts were more accurately stated therein then you can now recal' them from memory are they not?

A. Yes, sir.

Q. You knew at the time of the purchase of these lots by Nash from the La Crosse Road?

397 A. I knew of it within three days, probably within three hours, but I cannot now recal' the exact time. I should very much rather say I knew it within an hour than that I didn't know it within three days. I knew of it almost as soon as it happened.

Q. Did you know at the time and occasion of the transfer of these lots by Nash to Kneeland?

A. No; I do not believe I knew of the transfer of the lots to Kneeland at the time. I do not believe I remember the occasion. I do not perhaps apprehend the meaning of your question. I do not know whether you use the word occasion in the sense of cause.

Q. What I mean is, were you cognizant of the fact at the time?

A. I do not think I was.

Q. Did you not, Mr. Mariner, draw some papers pertaining to that transfer?

A. I do not recal' it. I hardly think I did.

Q. Were you cognizant of the transfer of a portion of the lots so acquired by Kneeland to Ludington at or about the time?

A. I do not think I was. I am very sure I was not.

Q. Were you cognizant of the transfer or had any knowledge of the transfer of any portion of that purchase of Nash and Kneeland by
398 Kneeland to anybody else about the time it was made?

A. I was not.

Q. How are you able to remember that you were not?

A. It would be pretty hard work for a man to remember that he didn't know a certain thing. I simply don't remember that I was cognizant of the transaction.

Q. You don't remember now that you did know it at the time. Is it not quite possible that you did know it at the time and have forgotten about it?

A. No, sir.

Q. How long afterwards was it that you did know about it?

A. It was either in 1856 or 1857. I may have known it as early as the middle of the year 1856, and I may not have known it until the middle of 1857.

Q. The record discloses that after Nash purchased these lots from the La Crosse Company that he conveyed a portion of them to James Ludington. Can you tell when or about when you first learned of it?

A. I cannot answer that question without telling a long story or answering technically. I first learned or had actual knowledge
399 of the fact when I saw the deed. I cannot tell when I first saw the deed. I learned about the matter by indirection before that, and I can only tell that by giving a statement of the indirection.

Q. The question, Mr Mariner, is not about the details of what you first learned, but it is the time I am after. Now when did you first hear of it?

A. I did not hear who had purchased when I heard that there had been a purchase.

Q. But when did you hear that Ludington had purchased it, according to your best recollection?

A. I am not sure but that I heard that Ludington had purchased it about the time or after the time the Cleveland bill was filed, but still it seems to me I must have been satisfied that Ludington had a third interest before that time.

Q. Can you not fix that a little more definitely?

A. It was between July and December, 1856, or July and December, 1857, I should think.

Q. That is as near as you can fix it?

A. Yes; that would be my impression if I was going to fix it definitely. Still, I can't say positively. It may have been just a bare sus-

picion; it may have been something that satisfied me that it was a fact, and upon which I acted and which has turned out to be a fact.

400 Q. To whom was the other third conveyed by Moses Kneeland?

A. He conveyed one-third to Byron Kilbourn, one-third to James Ludington, and kept a third.

Q. You have stated when you first heard of the conveyance to Ludington. When did you first hear of the conveyance of the other third to Kilbourn?

A. At the same time with Ludington, I should think. I heard all that I did hear about it at one time, until I saw the deeds. I probably didn't see Ludington's deed until 1864, but I saw Mr. Kilbourn's deed in 1857, and possibly I saw it in 1856.

Q. Did you not know at the time or about the time of the sale of that interest by Kilbourn to Goodrich?

A. I believe that I did.

Q. About the time of the transfer?

A. Well, I would not be sure about the transfer, but I suppose I knew of the time of the sale and the payment of the consideration, and it is possible that the transfer was at that time.

Q. If I remember aright, in your previous examination you stated that you were attorney for Ludington in 1855, 1856, and 1857?

401 A. I think I did some business for Ludington in all of those years.

Q. And for Kneeland in all those years?

A. No; none for Kneeland until long after that.

Q. Long after 1857?

A. Yes; not until 1858, and probably not until 1859.

Q. You did business for Mr. Goodrich, as I remember, during 1855, 1856 and 1857?

A. Yes; I was Mr. Goodrich's general adviser during the years 1855, 1856, and 1857.

Q. Did you not understand about the time this property was purchased by Nash from the La Crosse road that it was purchased in part for the benefit of Byron Kilbourn?

A. No, sir. I understood that it was purchased for the benefit of Mr. Nash and M. C. D. Cook.

(Last part of the answer objected to by complainant's counsel.)

Q. On your previous examination I understood you to testify that you and Mr. Goodrich, at one time, owned one-third of those lots, or an interest in the ownership of them together. Was that correct?

A. Yes, sir.

Q. While you were testifying before, you were unable then to re-

402 member whether you ever took more than one conveyance from any one of the interest in those lots. Have you refreshed your recollection since so as to be able to state whether you ever did take more than one conveyance of the interest in those lots?

A. I cannot find the file of papers that referred to that property. It is probable that when I closed up the matter with the St. Paul Company or afterwards, that I destroyed them, or some of them, or threw them away. I cannot find anything but these deeds. I cannot find the accounts about them, and have not been able to yet. I am still looking.

Q. Have you remembrance of any other deed than the one?

A. I have got an impression, and I had at the time I was examined before, that there were two deeds; that there was a deed of the sixth and then a full deed of third, but I did not feel able to state positively about it before, and I do not now. I had first a sixth with Mr. Good-

rich; then I bought the sixth that he had, making the full third, and paid for it in that order. I cannot be sure that I got a deed each time. I have got an impression that I did get a deed when I got the sixth
403 and then took a deed for the whole third, but I would not like to be positive.

Q. In the answer which you filed in this cause, in which you were a defendant, speaking of the third interest you acquired in those lots you add that he (meaning you) derived such a title under and by virtue of a deed executed to this defendant by one Goodrich on the 18th of Nov'ber, 1857. Now, that answer being put in at a point of time nearer to the transaction than this, is it not to your mind pretty satisfactory evidence that there was but one deed and one conveyance?

A. No.

Q. It is not?

A. No, I do not think I would be sure from that fact alone.

Q. You understood that this suit was directed in part against the title you claimed, seeking to impeach it, to those lots; if you had any other or better evidence to your title than the deed of 18th of November, is it not very probable that you would have set it out in that answer?

A. That was the deed under which I claimed the title at the time. It was the deed that I recorded, and any other deed that I had had
404 before that to the sixth, if I had one, would not have been any better evidence of title that I know of than that. So that I do not think it would follow with any degree of certainty that I would set out the other deed. Now, I do not want to say from that that I feel sure I did have another deed, because I have not a recollection of such positiveness that I would be willing to make an absolute statement of it.

Q. At the time you say you contracted with Goodrich for a sixth interest in this property, as well as at the time of the conveyance of the whole third to you by Goodrich, is it not true that Mr. Goodrich was financially responsible to the extent of more than the full value of the interest you purchased?

(Objected to by Mr. Cary.)

A. No; at the time I bought the property he was not worth the whole of the property.

Q. That you purchased?

A. When he gave me a deed of the whole of that property, he was not worth what I paid for that property.

Q. That was in November, 1857?

A. Yes.

Q. Are you not mistaken about that?

A. No, sir.

Q. Did he give you a warranty?

405 A. I believe he did; I am not positive about that.

Q. Mr. Goodrich became responsible and was reputed a man of wealth, was he not, from the year 1860 to the year 1865?

A. I guess from about the year 1861 to the year 1867, Mr. Goodrich was reputed a man of wealth. I guess that Mr. Goodrich has paid his paper right along from 1854 to 1867.

Cross-examination by Mr. CARY:

Q. Will you state fully the facts relative to the Bridgeport Bank foreclosure case so far as you know?

A. The Bridgeport Bank purchased from Mr. Holton a note and mortgage given by the Milwaukee, Fond Du Lac and Green Bay Railroad Company for the purchase money of a part of this property described in

the bill of complaint, and the mortgage was on the property when I bought the interest that I had in it, and Kneeland, Ludington, and I for a time paid the interest on it. About the time of the entry of the decree in the Cleveland case, I think—at all events some time before the note matured—we stopped paying the interest. When it matured it was sent on here for collection. Mr. Holton, who had endorsed or
406 guaranteed the payment of the note to the savings bank, came to me and asked me to pay that note or to see that it was paid; that he was liable for the money, and it was not right that he should be compelled to pay it; the bank had written to him and was looking to him for payment.

Mr. MURPHEY. I object to the conversation between you and Holton and the conversation which he speaks of as between him and the bank as being incompetent testimony.

WITNESS (resuming). I told Mr. Holton that Judge Miller had decided that our title to the property was in the nature of a trust, and that although that suit had been settled, there were other creditors of the company who were making the same claim, and that we would not pay the money on that note, or pay any more money on account of that property after that decision.

Q. What decision was that?

A. That decision in the case of Cleveland against La Crosse Company.

Q. In what court?

A. In the district court of the United States in 1858. I told him that other parties made the same claim; that the mortgage was a lien upon the property, and if the savings bank would foreclose the mort-
407 gage we would bid on the property enough so that Mr. Holton should not be damaged. Mr. Holton told me that he communicated these facts to the bank. At all events, Finches, Lynde and Miller called upon me to pay the money due on the note, saying that they had the note and mortgage for collection. I repeated to them substantially what I had to Mr. Holton. They accordingly foreclosed the mortgage, making all of the creditors of the La Crosse Company, so far as I then knew, parties.

When it came to sale we were unable to keep our promise to Mr. Holton, and told him so; that we had not the money and could not bid there at the sale. I told him that if the bank bought the property at the sale, and would sell it to us and give us time on the purchase, that we would buy the property and pay the amount of the judgment against the property and the costs of sale. The property was offered at sale, bid in by the bank, and we subsequently bought it of them. Neither the bank nor Mr. Holton made any promise to us that they would bid off the property. We made that promise to Mr. Holton to save him from loss by reason of the endorsement. That was all the prom-
408 ise there was in any respect that I can now recall.

Q. Will you state, Mr. Mariner, the facts relative to the discontinuance of this suit against you by Mr. Carpenter?

A. Some time in 1862, I think, Mr. Kneeland informed me that he had made——

(Complainant's counsel object to all conversation between the witness and Kneeland or anybody else with regard to the matter about which he is testifying, except with the complainant's counsel, or one of them.)

WITNESS (resuming). Had made an arrangement with the complainants by which they agreed to discontinue this suit as to us.

Q. As to whom?

A. Kneeland, Ludington, and Mariner. I applied to Mr. Carpenter about that at different times for quite a long time; at first he put me off; said he wanted to see Mr. Graham. He finally told me that Graham was afraid to trust Kneeland and Ludington to perform their part of the stipulation that he had made with them. The stipulation, as Kneeland told it to me, referred to all three of us.

Q. Was this arrangement in writing?

409 A. No; I do not understand that it was. I never understood that it was. I think that the first time I applied to Mr. Carpenter to discontinue as to myself separately he declined doing it. I then told him I would not stand it any longer; that he must either go on and try this case or discontinue it as to me; that, as I understood it, the bargain was a fair and square one and well understood. He finally made a stipulation with me to discontinue the case, and he did it, as I understood him, upon consultation with Mr. Graham. I never saw him consulting with Mr. Graham, or heard him consulting with Mr. Graham about it. He did not do it upon any bargain or stipulation or contract that I ever had or ever knew of with Mr. Fleming. The arrangement that Mr. Carpenter spoke of between Mr. Fleming and myself was made between two or three years afterwards. At all events, it was after the discontinuance was made. After the Minnesota Company obtained possession of the road, Mr. Fleming came to me and retained me to look up how the property of the eastern division here in the city stood as to taxes, and to litigate any tax titles there were upon the property and straighten it out as to titles. But that was a long time after this

410 stipulation was made to discontinue this case, and the stipulation was made, as I understood it, as the part performance of a bargain made between Mr. Kneeland and Mr. Graham.

Q. Did Mr. Carpenter refer to Mr. Fleming as his authority for making the discontinuance?

A. No, sir.

Q. This arrangement as to taxes was after the Minnesota Company got possession of the road?

A. Yes, sir.

Q. Do you recollect when they took possession of the eastern division of the road?

A. It was in January, 1865, or 1866.

Q. Is there anything further on that subject, Mr. Mariner, that you want to say?

A. No; not upon the stipulation. The suit was discontinued. Mr. Carpenter was correct, I think, in one of his recollections, and that is that the stipulation was filed in open court; that is my recollection about it.

Q. State the facts connected with the purchase of this property by Mr. Nash, so far as you have any knowledge of them, and what participation, if any, Mr. Kneeland and Mr. Ludington had in the purchase?

411 A. All I know about the purchase of the property by Mr. Nash is what appears by the deeds and what I have heard from Mr. Nash, Mr. Kneeland, Mr. Ludington, and Mr. Goodrich and what appears from the books of the railroad company. That I suppose you would object to, Mr. Murphey?

Mr. MURPHEY. Certainly. The records would be the best evidence.

Q. What notice, if any, had you of Nash's purchase or of Kneeland's participation in it?

A. I was told of Mr. Nash's purchase a very short time after it was made. I was told by Mr. Goodrich. I had made a proposition to the

railroad company two or three days before that purchase, which grew out of an agreement between Dr. Judd and myself, for the purchase of a large part of this property.

Mr. MURPHEY. I object to any statement of contract between witness and Dr. Judd.

WITNESS. After I had heard of this purchase by Mr. Nash I went to Mr. Goodrich, who was one of the officers of the company, and told him of the agreement I had with Dr. Judd.

Mr. MURPHEY. Complainant's counsel objects to all the talk between witness and Kneeland, Judd, Ludington, Goodrich, or anybody
412 else except the complainant.

WITNESS. I complained that my contract had not been carried out. I told him that I thought it was a trick of Kneeland's. Kneeland and I were not personally friendly. He told me that he would find out about it, or as he expressed it, "go to the bottom of the thing," and that if Kneeland was interested in the purchase that the agreement between Dr. Judd and myself should be carried out, that I should have the property that I had bargained for or he would make a fuss about it. Within a few days he came to me and told me that he had inquired thoroughly about it, and that he was entirely satisfied that the contract was made for the benefit of Mr. Nash and Mr. C. D. Cook, now deceased, and I have never heard the contrary of that until I saw the bill in the case of Cleveland against the railroad company sometime in the fall of 1857. I had always heard that the purchase was made for the benefit of Mr. Nash and Mr. Cook, and that they had got sick of the bargain and turned it over to Kilbourne, Ludington and Kneeland.

413 Q. Are Moses Kneeland, Dr. Judd, Byron Kilbourn, and C. D. Cook all deceased?

A. Yes.

Q. Do you recollect when Mr. Kneeland died?

A. I think in January, 1864.

Q. When did Mr. Cook die?

A. In 1857; possibly not until 1859.

Q. You may state what you know relative to the payment for this property, stating first what you know in regard to the payment by Nash.

A. I do not know personally that Mr. Nash paid the part consideration that was to be paid in farm mortgages. I know what the railroad company's books show in regard to that. The stock payment was made I know. I happened to be at the office when it was made. I can state what the books show. I think I can get Mr. Bonnell to show from the books how that matter is.

Q. You may next state what you paid for the property when you purchased it.

(Objected to by complainant's counsel.)

A. The purchase was made, I think, some time in 1856. The purchase was made through Mr. Goodrich. He came to me, or I met him, and he asked me if I wanted a part of the property. I think he told me
414 that I could have half of it, or some interest in it, and as to the result of the conversation I agreed to take one-third of the property with him. I paid him at the time, I think, $7,800 in farm mortgages and in bonds of the city of Milwaukee. The exact amount of farm mortgages and the exact amount of bonds I cannot tell now.

Q. That was for what part of the property?

A. It is my impression that was at the time a full payment for one-third of the property, subject to the incumbrances. It is possible that

there was a money payment in addition made at the time; I cannot tell about that. The property at that time had been somewhat improved; it was afterwards largely improved. Some time afterwards—three, four, five, or six months, or possibly a year, but I do not think it was as long as that—we had a settlement, and I then paid $1,600 or $1,800 in money in addition as the share of the third of the property for disbursements for improvements in addition to what I had before paid.

Q. In addition to the $7,800?

A. Yes, in addition to that. The money that I then paid was
415 all for improvements. I think the $7,800 in securities was the purchase price for the third of the property at the time. I think I paid not only for my sixth, but also for Mr. Goodrich's sixth.

Q. The understanding at that time was that you were to have a sixth and Mr. Goodrich a sixth?

A. Yes.

Q. Did you subsequently acquire Mr. Goodrich's interest in it?

A. Yes.

Q. When was that?

A. That was in the fall of 1857.

Q. Do you recollect what you paid him for his interest?

A. It was nine or ten thousand dollars; I cannot tell just the amount now; I have not any means of ascertaining; if I could find the file of papers that related to that property I could tell exactly.

Q. At that time had there been any large improvements upon it?

A. Yes. Mr. Goodrich had in the mean time paid a larger proportion of the expense of improvements than I had. That payment was
416 made in part in farm mortgages and in part in real estate in the 4th ward of this city on the hill.

Q. When was this property sold to the St. Paul Company?

A. I think my conveyance of the property was delivered in the month of November, 1864. I made a proposition to them to sell the property to them in the spring of that year, but I was never notified of its acceptance, and never have been to this day, but the company directly went into possession of the property.

Q. They went directly into possession of it after your proposition?

A. Yes.

Q. And closed the matter up at the end of 1864?

A. Yes, sir; they closed the matter up after I threatened a lawsuit and to interrupt their business.

Q. At what price did you sell it to the St. Paul and Milwaukee Company?

A. I sold my one-third of the property for $18,000; that included some property that was not purchased of the La Crosse Company by Nash, and did not include some that had been.

Q. Do you know what the Milwaukee and St. Paul Company paid Ludington and the estate of Kneeland for their one-third?

417 A. They paid Luddington the same—$18,000—and I believe the estate of Kneeland a little less, though I would not be sure.

Q. Had the property been largely improved since the purchase in 1855?

WITNESS. When we purchased the property?

Mr. CAREY. When the railroad company sold the property.

WITNESS. The La Crosse Company?

Mr. CAREY. Yes; the La Crosse Company.

A. There was not then to exceed a strip of land 40 feet wide and 400 feet long above water.

(Counsel for plaintiff objects to that statement of witness, or any statement by him, in regard so the condition of the property, as not being cross-examination or responsive to questions asked.)

WITNESS (continuing). Only the lots in block 158 were docked, and the dock that was there had only two strips of timber on it. The river, if it had ever been dredged in front of block 158, had become filled up again. It had not been dredged along, nor had any dock been made in front of, block 155. We built a dock and dredged the river in front of that block, and we added to the dock on block 158, and dredged the river there and distributed the earth over the property. We also filled up quite a large amount from the river where they were dredging in other places, and from ballast of vessels coming from Buffalo and Os-
418 wego here. We filled the whole property. With the exception of the bayou on block 157, I think it was all filled at the time it was sold, and that was filled back 20 feet from Reed street. We raised and paved Reed street twice and built a sewer. I have not any means of getting at the figures now, but I think we expended on the property over $20,000 while we had it.

Q. In improvements?

A. Yes.

(All this testimony in regard to filling of lots is objected to by complainant's counsel as not cross-examination and as not responsive to the interrogatories.)

Q. Since your sale of this property to the St. Paul Company have they made large improvements upon it?

(Objected to by complainant's counsel.)

A. Yes, sir. They have built on the property, I think docked it anew outside of the old docks on two sides; they have filled it again, the property being of such a nature that it is constantly settling. There is from 60 to 120 feet of mud and vegetable matter all over this ground and I do not know but 160 feet. It has been bored 120 feet with that result, and it needs filling to-day again. They have constructed an elevator on it at a very large cost. I knew what that cost, but I have forgotten. Something over $300,000. They have constructed
419 a passenger house on it, I should think worth $3,000; they have constructed a freight-house on block 158, I should think worth $4,000; they have constructed a round house I should say at a cost of $20,000; and there is another small building that was the commencement of a machine shop worth a couple of thousand dollars; there is a freight shed on it on the west side worth five or six thousand dollars; there is a grain house on the north of the elevator that I have never been in. I do not know who did build that.

Q. Is not that land now covered in a great measure with railroad tracks?

A. Yes; I should think there was a mile or a mile and a half of railroad tracks, and a large and valuable immigrant house worth $75. I do not think of any other improvements than those I have mentioned.

Q. Is there anything else that you know that would tend to the elucidation of the questions involved in this suit? If so, state it.

(Objected to by complainant's counsel.)

A. I do not now remember anything.

Redirect examination:

Q. How long a time did Kneeland, Ludington, and Mariner pay interest on the Holton mortgage before the sale?

A. I should think from one to three years; possibly not six months,

but I think from one to three years. I cannot remember;
420 it is quite a while ago.

Q. To whom did you make the payments?

A. I do not remember whether I paid the interest personally at all. I have a sort of a recollection that I once made a payment of interest to Mr. Baker of the State Bank. I may not have done it, but it seems to me that I did.

Q. Do you know to whom you paid the interest during those six months?

A. Whatever payments were made were made to some bank in this city.

Q. Do you know what bank?

A. I think we paid it to Mr. Baker. It is possible we made some payments to the First National Bank. We may have paid all that we did pay to Mr. Baker.

Q. You don't know who you did pay it to?

A. I am in doubt about it.

Q. Who held the note and mortgage?

A. The Bridgeport Savings Bank.

Q. I understood you to swear some time ago that the Bridgeport Savings Bank bought that mortgage of Mr. Holton?

A. Either Mr. Holton or Mr. Sterling told me so, and I think I saw the transfer.

Q. What do you mean by seeing the transfer; seeing it transferred or seeing the instrument of transfer?

421 A. I saw the instrument of transfer.

Q. Did you or either of you pay the interest up to the time of putting the mortgage in foreclosure?

A. I should say not, and yet I would not be sure. We stopped paying on that mortgage when we began to have a suspicion that perhaps Judge Miller would hold that property a trust in our hands—a constructive trust.

Q. Your impressions in that regard were stimulated by the fact that he had so held?

A. My impression is that we stopped before the decree, but I cannot say so as to be sure.

Q. Have you examined lately the endorsement on that note on file in the clerk's office?

A. No, sir.

Q. Did the La Crosse and Milwaukee Company ever own that note and mortgage at any time after the time of the pretended sale to the Bridgeport Savings Bank?

A. No.

Q. How do you know?

A. I say not, for I never heard that they had.

Q. Suppose you should find upon the back of that note a receipt for the interest for three years after the pretended transfer to the
422 Bridgeport Saving Bank by E. H. Goodrich as treasurer of the La Crosse and Milwaukee Railroad, what would that prove to you?

A. It would prove that the receipt was on the back of it. It would not prove to me that Goodrich was treasurer of the railroad, because he never was treasurer of it.

Q. Vice-president I mean.

A. He may have been vice-president. I should be satisfied, if I should see such an endorsement, that Mr. Hartwell had sent the mortgage to the railroad company to collect the interest. Mr. Hartwell and the

railroad company had dealings to quite an amount, in respect to the purchase and sale of securities.

Q. Do you think it is a common practice for the holder of a mortgage to send it to the mortgagor to collect the interest?

A. I do not exactly comprehend how the La Crosse and Milwaukee Railroad became the mortgagor.

Q. Suppose by the act of consolidation of the La Crosse and Milwaukee Road with Milwaukee, Fond du Lac and Green Bay Road, the La Crosse Company agrees and assumes to pay these mortgages and all other outstanding indebtedness of the La Crosse and Milwaukee
423 Road, would it not become practically, though perhaps not literally, the mortgagor?

A. No, sir.

Q. It would leave the La Crosse road disinterested in the payment of the mortgage?

A. No, sir.

Q. You think that if you should find that endorsement on the note, you would conclude that it had been sent forward to the La Crosse Company for collection?

A. Yes.

Q. When you speak about the assignment or transfer of the mortgage from Holton to the Bridgeport Savings Bank, do you mean to say that there was ever any written assignment?

A. I think there was. I think I should be able to find one.

Q. Have you any personal knowledge, Mr. Mariner—do you profess to have any personal knowledge in regard to the actual transfer, the date of the transfer, the consideration for the transfer, or either, of that note and mortgage from Mr. Holton to the Bridgeport Savings Bank, beyond the fact that it was in some one's hands here who claimed to represent the Bridgeport Savings Bank, and claimed that it owned this note
424 and mortgage?

A. Yes.

Q. State what it is.

A. The statements of Mr. Sterling.

Q. Who was Mr. Sterling?

A. The treasurer of the savings bank. The statement of Sherman Hartwell, whom I think was also treasurer of the savings bank, and I have it in my mind that I have seen that note and mortgage, or bond and mortgage, in Mr. Sterling's hands.

Q. Do you call that personal knowledge in regard to the date of the transfer or the consideration of the transfer of the note and mortgage?

A. I have not answered it as being personal knowledge of the date or consideration.

Q. You don't, then, profess any personal knowledge of the date or consideration of it?

A. I think I have seen somewhere either a record of the assignment of that mortgage or a recital in some instrument of conveyance that it was assigned. If I had seen the instrument of assignment, that would be personal knowledge of the transfer.

Q. Will you now swear that you ever saw an assignment of that note and mortgage to the Bridgeport Savings Bank?

A. Positively, I cannot. I have got an impression, as I say, that I have seen either the assignment of that mortgage or a recital of the assignment in some other document, but I cannot be positive of it.

Q. Can you tell when you first began to pay interest on the mortgage?

A. I should say in 1856.

Q. Could you tell what time in 1856; do you think the whole year?

A. I have paid in some way one-third of the interest for the whole year of 1856, but whether I paid it as paying so much interest, or
425 whether I paid it as so much that had been paid out by somebody else, I cannot say, and that makes me in doubt in respect to the time when it was paid.

Q. Did you pay it in 1857, the year following?

A. I should think so.

Q. So you think you paid the interest for at least two years before the foreclosure was commenced?

A. Yes, sir.

Q. If you didn't pay that directly, but paid it as you now suggest, as so much having been paid by somebody else, who was that somebody else who paid it?

A. It may have been either Mr. Kneeland, Mr. Ludington, or Mr. Goodrich, one of those three.

Q. I understood you to say on your cross-examination that you promised Mr. Holton, who was an endorser of this note, that if the bank would foreclose the note you would bid it in for enough to cover the amount due, principal, interest and costs; that was your first arrangement. Did I understand you aright?

A. No. If I said that I went a little beyond what the fact was. What was the fact?

426 The arrangement with Mr. Holton was, that we would bid upon it enough, so that he should not lose. We did not undertake to bid it in.

Q. Did you not state to Mr. Cary a few minutes ago that you was unable to recal' any other arrangement or contract in regard to foreclosing the mortgage or bidding it in on the sale, other than the one you have testified to as having been made with Mr. Holton?

A. I have testified to two arrangements made with Mr. Holton; which one do you mean?

Q. The first one.

A. No, sir. I did not answer Mr. Cary that I could not recall any other arrangement than the first one.

Q. What was the second one?

A. The second one was that if the bank should give us time on our bid, instead of exacting the money, we would attend the sale and bid the amount we had agreed to, or if the bank would bid in the property, we would take it off the hands of the bank, so as to keep Mr. Holton harmless.

Q. Did you not state to Mr. Carey that you could not recall any other arrangement or agreement made with Holton, or anybody else,
427 than those two arrangements you now speak of?

A. Yes, sir; I think I did.

Q. Have you not testified previously in this cause to having made other arrangements, or kindred arrangements, to the one you have now referred to with the bank officers direct, or with its attorney?

A. I think I testified that I had the same talk with Mr. Sterling that I had with Mr. Holton. I told Mr. Carey not that I had made no arrangements except with Mr. Holton, but that these were the only arrangements I had made.

Q. And that you could not recall the memory of any other?

A. Yes.

Q. Now, did you not testify before in this case that you might have

written a letter to Mr. Sterling, the treasurer of the bank, upon this subject?

A. Yes, sir.

Q. And that you had either written such a letter or had made a personal communication to him, or to his attorneys here, to that effect?

A. Yes.

Q. The reason that you stopped paying interest on this mortgage I understood to have been the uncertainty of the validity of the
428 title you held in these lots as against the creditors of the La Crosse Company; is that so?

A. That was the great reason. There were two or three other little matters. In the first place, the property was not worth any more at the time we stopped paying interest than the amount of the incumbrance. In the next place, we were—or, rather, speaking for myself—I was hard up—impecunious. But the main reason was, as you suggest, the question that was made by the creditors of the La Crosse Company as to the validity of our title.

Q. And you told the bank and Mr. Holton that that was a serious objection with you?

A. Yes.

Q. Unless they would go on and foreclose the mortgage and clean out that question, you had doubts about going on and doing more?

A. We did not tell them that we had any doubt; we told them we would not pay any more.

Q. Now, Mr. Mariner, will you swear that Mr. Carpenter, at or about the time of entering this discontinuance against you, told you that he had consulted with his client, Mr. Graham, and that Mr. Graham
429 consented to this discontinuance; or words to that effect?

A. No, sir; I do not think he ever used that style of phrase to me.

Q. I say, "words to that effect?"

A. I do not understand, and I did not mean to testify, and if I did it was a misapprehension, that Mr. Carpenter ever told me that he had consulted with Mr. Graham for the purpose of getting authority from Mr. Graham to discontinue this suit as to me, or to make any arrangement about it. I had not any sort of an idea that Mr. Carpenter would make a discontinuance that he was not authorized to do, and have not now any sort of an idea that he had made a stipulation for discontinuance that he was not authorized to do.

Mr. MURPHEY. I object to the last part of the answer as not being responsive to my question at all.

Q. What do you mean by the last part of your answer to the preceding, wherein you say that you have no doubt that Mr. Carpenter did not make a stipulation for discontinuance against you that he had no right to make?

430 A. I cannot make the words any simpler that I know of. If you suggest in what respect you want information, I will try and enlighten you.

Q. I have suggested it in that question as plain as I can make the question.

A. I don't know but what I will have to refer you to the dictionary.

Q. Is that all the answer you have to make to the question?

A. The two answers are; I cannot make use of language that will make my meaning any more manifest; and if you don't understand it, or any part of it, and will inform me in what respect, I will try and be more explicit.

Q. I will do so. Mr. Carpenter has sworn that he had no authority from Mr. Graham to make this discontinuance; Mr. Graham has sworn that he gave no authority to Mr. Carpenter to do it. I understand your answer to be that you have no doubt, notwithstanding you have heard these men sworn, that Mr. Carpenter did have authority from Mr. Graham.

A. I have not the slightest doubt in the world but that Mr. Graham did consult with Mr. Carpenter in respect to making the agree-
431 ment that Mr. Kneeland told me Mr. Graham had made with him. I have not any doubt but what that agreement was made; and I have not any doubt but what Mr. Graham was aware within a short time of the fact that the discontinuance was made; and I have no sort of doubt but that Mr. Carpenter made that discontinuance with Mr. Graham's explicit authority. That agreement with Kneeland, so far as I can remember it, was carried out, and it was carried out both before the stipulation and after the stipulation. If you want it any more plain than that—if you desire any sort of explanation—I will make it.

Q. Then I conclude that your opinion must be that Mr. Graham and Mr. Carpenter have either wilfully sworn falsely about that thing, or else that they have forgotten utterly the whole transaction; which do you conclude is the fact?

(Objected to by Mr. Carey, for the reason that it is utterly immaterial o the determination of this case whichever way that may be.)

A. I conclude that they have forgotten. Mr. Carpenter express-
432 ly made it manifest that he had forgotten, & I think that Mr. Graham has forgotten, for I have great confidence in the verity of both gentlemen.

Q. You predicate your abiding confidence, it would seem, in the supposition that Mr. Carpenter and Mr. Graham are both mistaken upon the existence of a contract which you say Kneeland told you he had made with somebody else, and about which you profess no personal knowledge; is not that so?

A. That is so to a certain extent. I do it upon my idea of the existence of that contract and what took place between Mr. Carpenter and myself touching such a contract, I asserting it on the one hand and Mr. Carpenter not denying it on the other.

Q. With whom did Mr. Kneeland tell you that he had made this contract?

A. With Mr. Graham.

Q. With Mr. Graham alone?

A. I do not know that I ever saw Mr. Scott; I presume that I have seen him. I do not know that Mr. Scott ever lifted a finger or suggested an idea in respect to this litigation at all. So that when I speak of Mr. Graham doing a thing I speak of the representatives of that side.

432½ Q. What I want to know is whether you understood from Kneeland that Graham or Graham and Scott were the only parties represented on the other side?

A. Certainly; I so understood it.

Q. Who was represented as with Kneeland; anybody?

A. No; I do not understand that anybody was on our side of the contract except Kneeland, Ludington, and myself.

Q. What was that contract; will you give it?

A. I cannot give it. I can give a little of it as I now recollect it. At the time this contract was made there was a suit pending to foreclose

the second mortgage, so called, on the eastern division. There was also a suit pending to foreclose a mortgage on the western division. There was also a suit pending to foreclose the second mortgage from Tomah to La Crosse. There was this litigation of Graham and Scott pending; and I think there was a bill between the Minnesota Company and Crocker, receiver. Mr. Kneeland had been an active man in the management of the La Crosse Company and in the sale of their securities, and he probably knew more about the facts in respect to the con-
433 duct of the La Crosse Company at that time than any other man here or anywhere. Mr. Kneeland had also in his possession a memorandum of the purchase and the prices paid for the second mortgage bonds we sold.

Mr. MURPHEY. I object to all of this as being by no possibility responsive to the question which I asked and which I now repeat. You can say or you cannot say whether that contract was made and what you understood it was.

WITNESS (continuing). That knowledge was material in the litigation between Graham and Scott and the La Crosse Company and the Minnesota Company, or the parties that represented it on the one side, and the parties that represented the interest that has subsequently grown to be the St. Paul Company on the other. The bargain was, that if Mr. Kneeland would use his knowledge and give assistance in the litigation, in the negotiations and in the settlement, should take sides with Graham and Scott—that was the Minnesota side of the question—and help them through this litigation, that this suit should be discontinued as to us. Mr. Ludington and I were also to assist as well as we could in the litigation and in any negotiations.
434 Now I know that Mr. Kneeland up to the time that he died, so far as he could, carried out his side of the stipulation.

Q. You swear that he did?

A. So far as I know. I know that he spent a great deal of time in respect to it. I know that I did, so far as I recollect. I only know the contract at second hand. I have dropped this thing out of mind since I supposed I was out of the litigation, and I cannot recall it as I knew it at the time, but substantially that was what I understood was the bargain.

Q. What was Mr. Ludington, Mr. Kneeland, and Mr. Mariner to do for the benefit of Graham and Scott to aid them to obtain a claim of $60,000? Specify particularly what, by the terms of the contract, they were to do.

A. I have specified so far as I can do. Graham and Scott were, for some reasons that I did not know at the time, but I suppose I know now from the contract that was shown me the other day, taking the same side of that litigation with the Minnesota Company. Mr. Kneeland was to furnish that side of the litigation as against the interest that has subsequently grown to be the St. Paul Company with
435 the information that he had, and with his ability to negotiate, and with the ability that Mr. Ludington and I had to negotiate, such as it was.

Q. Was that all?

A. That was all.

Q. You understood then, Mr. Mariner, without being able to particularise a single thing to be done by either of you three men material to the interest of Graham and Scott, that they were to discontinue this suit and abandon any claim under it upon your bare promise to furnish such information as you vaguely mention?

A. I did not say that.

Q. What then, I repeat, were you to do?

A. I have stated the terms of the contract as they were detailed to me and as I now recall them. It is possible that there was something more—possibly considerable more—but a man is expected to forget a thing in which he has no interest after the lapse of ten years.

Q. When was this suit to be discontinued by the terms of the contract?

A. As I understood it directly, when it was communicated to me it was with the direction to see Carpenter and get the matter fixed, that is, get the discontinuance.

436 Q. Were you not at that time attorney on the record for James Ludington and Moses Kneeland?

A. Yes, sir.

Q. Had you not put in an answer for both of them?

A. Yes, sir; and I also put in an answer for myself.

Q. After that arrangement was made you went on to get your part of it dismissed?

A. Certainly.

Q. Why did you not get the case dismissed as to your other clients?

A. Because when I applied to Mr. Carpenter he told me that Graham was not willing to trust either Kneeland or Ludington, that he wanted to hold the suit over them so as to have something in his power to compel them to execute the contract.

Q. How do you know that that contract was not in writing?

A. I do not know that it was not written. I never heard that it was in writing.

Q. Did you hear it was not in writing?

A. Yes.

Q. Who told you?

437 A. Mr. Kneeland.

Q. How came he to tell you it was not written?

A. I suppose, because he wanted to.

Q. Don't you know that he never told you it was not in writing?

A. I know that he did.

Q. If he told you it was not in writing, why didn't you so answer my question when I asked you whether it was in writing?

A. I so answered you.

Q. Was your answer consistent with the answer you have given now?

A. Yes.

Q. You cannot recal' why it was that Mr. Kneeland informed you that this agreement was not in writing?

A. Because it was a fact.

Q. Why was it not put in writing?

A. I do not know that.

Q. Have you what you consider a good memory?

A. A very good one; better than nine-tenths of men; yes, better than ninety-nine one-hundredths of men.

Q. When did he tell you that this contract was by parol?

A. In 1862, possibly in 1863.

438 Q. Do you swear with as much certainty to what he told you ten years ago as in regard to any other facts you have testified to in this case?

A. No, sir; there are some facts that I have sworn to with a great deal more positiveness than others.

Q. You do not swear to this with absolute positiveness?

A. I do not swear as to the words a man used thirteen years ago. I swear that the fact was communicated to me 13 years ago that there was such a contract, and that the contract was not in writing. I do not say that Mr. Kneeland used the words exactly that I used; but it was an unwritten contract to discontinue this suit upon some sort of terms.

Q. Did you, as attorney for Ludington & Kneeland, advise them to have this contract put in writing, and that it was void unless put in writing?

A. No, sir.

Q. You never advised that it be put in writing?

A. I cannot say. I did this: I went to Mr. Carpenter about this discontinuance. He declined to do it. I told Mr. Kneeland that he had declined to do it. I think, very likely, Carpenter put me off, saying he did not know of the agreement. He did not say that he would
439 do the thing, nor did he say he would not. I told Kneeland to see Graham and have it done. Whether he did see him or not I do not know.

Q. Have what done?

A. Have Carpenter make the discontinuance. That was what Kneeland wanted me to see Carpenter to have done. Carpenter did not give me the discontinuance. He told me that he, Graham, would not trust Kneeland or Ludington. I reported the result to them, and asked them whether I should take a discontinuace as to myself solely, and they said yes, and then I took it.

Q. Then it comes to this, that this suit was discontinued, so far as you were concerned, in pursuance of a verbal contract, which you understood Moses Kneeland to have made with Lawrence Graham, but about which you have no personal knowledge?

A. Yes, sir; that is exactly the position of affairs.

Q. Mr. Graham says he never made any agreement with Mr. Kneeland except the written agreement produced here in court. Do you believe that?

A. No, sir. I have not any sort of idea that Graham in that
440 respect is correct, and when any man tells me that anything I have seen worked out as I saw that was worked out without a contract, I shall not believe him.

Q. Then it comes to this, that you will take the statement of your co-defendant and client in a matter in which he is interested, and not given under oath, in preference to the sworn deposition of another party on the other side?

Mr. CAREY. I object to that.

A. No; it does not.

Q. Why is not that so?

A. This is why it is not so: If Mr. Graham was here making the statement to-day after this lapse of time, & Mr. Moses Kneeland was making a counter-statement, and I had not anything to do with it, I would have as much confidence in Mr. Graham as I would have in Mr. Kneeland, although Mr. Moses Kneeland was a man of a very accurate memory; but when this matter came to my knowledge I followed it right up, taking the information to Mr. Carpenter, and Mr. Carpenter did not deny it. I followed it along for several months, and the thing resulted by and by, so far as I was concerned, just as Moses Kneeland said the contract was, and the verbal contract that Mr. Kneeland told me was made was never gainsayed by anybody until within the last year or two.

441 Q. What do you mean by saying that this thing went along just as Moses Kneeland said it would?

A. As to me.

Q. It worked just as Kneeland said it would not work so far as he was concerned?

A. Yes, sir.

Q. Had not Moses Kneeland some interest of his own that were involved in this litigation that he was going to sacrifice?

A. I do not understand that Moses Kneeland was intending to sacrifice anything. I do not understand that there was any contract that he was to sacrifice anything. I believe he was interested in the Tomah and La Crosse division second mortgage bonds.

Q. Is this the copy of the contract that you referred to just now as the one you saw here the other day? (Paper handed to witness.)

A. No.

Q. What do you mean by no? Is not this the contract you referred to here as the contract you saw?

A. No.

Q. What contract did you refer to?

A. I referred to the contract between the Minnesota Company and Graham and Scott.

442 Q. Will you state whether you ever saw the paper you hold in your hand?

A. Yes, sir.

Q. When did you first see that?

A. The other day.

Q. From whom did you get it?

A. From Mr. Murphey, I believe.

Q. It came through me from Mr. Graham into court by your request?

A. Yes, sir; I think so. I think Mr. Graham handed it to you and you to me.

Q. Is not that the contract with Mr. Graham that you had in your hand, or at least inquired of Mr. Graham about the other day on his cross-examination?

A. It is one of them.

Q. In regard to the purchase of that property by Nash, can you tell us what it was that enabled you to remember that the fact of that purchase was immediately communicated to you?

A. Yes; I had made a bargain with Dr. Judd for the purchase of a part of the property as far as we could make it. I had, as the result of that bargain, made a written proposition to the company to be passed upon by the executive committee. The executive committee had a meeting that day, and I went to the office of the company for some

443 purpose—I presume, now, to see if my contract had been agreed to. I found out that there had been a sale of this property to Mr. Nash.

Q. Your first impression was that it was brought about by Kneeland?

A. Yes, sir.

Q. You knew, did you not, that Kneeland wanted to get that property?

A. No, sir; I had no idea that he did.

Q. What raised that suspicion in your mind?

A. Because Kneeland and I were not on very good terms.

Q. Why did you suppose, even granting that, that Kneeland should be using Nash as a middleman?

A. Kneeland and Nash had an office together, I believe, or Kneeland at that time was an officer in a bank where Nash was.

Q. And your impression was that he was simply conveying the property to Nash for his own benefit?

A. No; I do not think I had that impression at the time. At first I thought he was getting Mr. Nash to buy it so that I should not get it. Then, I presume that I had the additional idea that perhaps Kneeland was interested.

444 Q. Did not this fact also strengthen your suspicion that Kneeland was a director and a member of the executive committee of the La Crosse Company?

A. No.

Q. That didn't strengthen your suspicion?

A. No.

Q. That was a fact, however?

A. He certainly was a member of the board, and, I think, of the executive committee.

Q. How is it that you know of the payment of this $15,000?

A. I happened to be there at the time.

Q. Who delivered it?

A. I think Moses Kneeland.

Q. To whom did he deliver it?

A. To Mr. Burnell.

Q. What office did he hold?

A. Secretary.

Q. Do you know when that was?

A. No; I cannot say; it was after that suit was settled.

Q. The Walker suit?

A. Yes, sir.

Q. Do you know when that was settled?

A. I don't know as to dates.

Q. Was it before Nash sold to Kneeland?

A. It was after, not a very long time after, the original purchase.

445 I think I was the attorney for the La Crosse Company in that suit. After the purchase was made, some one was either associated with me or substituted for me, or I substituted some one else, and the suit was brought to a pretty short end. I had advised the company that they would probably be beaten in that suit, and I recollect hearing of Kneeland saying of me that I did not amount to anything; that I had told the company that suit would probably succeed; that the railroad company could not successfully defend the suit, & he (Kneeland) took the suit, and succeeded in inducing Walker to settle it in a short time.

Q. Can you fix the year that that stock was paid?

A. I think in 1856.

Q. Do you know the handwriting of Moses Kneeland?

A. Yes, sir.

Q. Will you look at the receipt that is annexed to Exhibit No. 1, purporting to be executed by Moses Kneeland, and state whether that is in Moses Kneeland's handwriting?

A. Yes, sir.

Q. That is dated, when?

A. July 21, 1856.

446 Q. And is received of C. D. Nash upon the face of it?

A. Yes, sir.

Q. But you think it was in fact delivered by Moses Kneeland?

A. My recollection of it is this: The offices of the company were in a

little brick building just south of the passenger depot in the 2nd ward. The secretary's office is in the rear; the directors' room and the executive committee's room, which is used by the president, is in front on the north side. There is an entry hall which goes back to the secretary's office and opens by side door into the president's room. I was in the secretary's office, as it seems to me, and was shown some stock by Mr. Burnell, I think, and was told that it was the Nash stock. It is my impression that nobody was in the room but Mr. Burnell and myself. Mr. Kneeland, however, was where I could see him in the executive committee room.

Q. One thing about this $7,800 in bonds: when did you pay that?

A. In 1856.

Q. To whom was it paid?

A. I handed them to Mr. E. H. Goodrich.

447 Q. Who owned the title at that time to this third which you afterwards got?

A. I believe it was in Byron Kilbourn.

Q. Why did you deliver it to Goodrich?

A. He made the purchase for us. The communication from Mr. Goodrich to me was like this: One day he says to me, "You can have an interest in that property that you felt so mortified about down there in the 4th ward at cost," or language like that. I had had a sharp talk before that with him about this matter, and both of us got mad. I think the offer was that I should have a half interest.

Q. Half of the third?

A. Half interest in the whole. I didn't take that for some reason, but I told him I would take a third interest with him, and it resulted in that, and I gave him the securities to pay for it.

Q. Where was Kilbourn; was he not consulted about it?

A. No; I do not think I knew at the time that Kilbourn had an interest in it; I did not know who it was coming from; I do not think it had been suggested to me that Kilbourn had anything to do with

448 it; I supposed it was coming from Kneeland; I did not suppose he, Kneeland, would contract with me, and I knew if I got an interest with him we would quarrel; we had done so before and I knew we would do so again. I expected Mr. Goodrich would buy the property and pay for it and take the title to himself.

Q. You were paying in that case the full value of one-third?

A. Yes; that is my recollection. I made the payments for the whole third. Now the matter ran along in this way: There had been some improvements made and some money spent, and there had been no settlement. Mr. Goodrich made the disbursements. I do not think I made any until the fall of 1856 or 1857, in my own name. In the fall of that year a quantity of paper given by Kneeland for the dredging of block 155 became due, and the holder expected Goodrich would pay it. Goodrich didn't, and it went to protest. One night I met Mr. Kneeland by invitation at Mr. Goodrich's house. Mr. Kneeland was then first

449 made aware that I had an interest with Goodrich in that property. We had a settlement of accounts at that time and I paid some money the next day.

Q. The title of this third was in Goodrich, and Kneeland didn't know you had an interest in it?

A. Yes, sir.

Q. When was that?

A. In 1856.

Q. So that before you took your conveyance of this third interest

which was in November, 1857, you knew, of course, that Kilbourn had originally owned the same interest that you had?

A. Yes.

Q. In the running recitation you gave here a little while ago to Mr. Cary of the improvements which the St. Paul Company has put upon this land, you did it rather ad captandum; I want to know whether you were speaking from an actual estimate of those things or was it merely a rough estimate?

A. I have been through the buildings at various times; the estimate in regard to the elevator is, of course, what I knew at the time. For instance, Fox and Howard, who did the work, were clients of mine
450 and brought suit against the railroad company for the work. I also brought suit for Alexander Miller, and I know what the elevator cost from them.

Q. It is not what you would call legal knowledge; it is what you obtained from third parties?

A. Yes; I could tell by looking at the passenger-house what it cost, or within $1,500 of it.

Q. Where did you get the $7,800 you paid to Goodrich at that time?

A. Probably most of it from the La Crosse Company.

Q. Borrowed?

A. No, sir. I was forehanded at that time.

Q. Didn't Goodrich own part of those securities?

A. No; I do not think he did. Some of them came out of a real estate operation in which Goodrich was interested, but I think we had settled and the securities were mine.

Q. Have you got anything on your books to show that payment?

A. I do not believe I have to show the bonds; if I made a cash payment, I think very likely I can find it.

451 Q. Did you ever see the paper that I now hand you before?

A. Yes, sir; a few days since.

Q. Who did you get it from?

A. From Mr. Murphey; that is, I saw it in Mr. Murphey's hands and took it from him.

Q. Did you refer to this contract the other day in your cross-examination of Mr. Carpenter or did Mr. Carpenter refer to it?

A. That is my impression; my impression is that Mr. Carpenter mentioned that as a copy of the contract that Mr. Gilman, of St. Paul, had sent to Graham.

Recross-examination:

Q. At the time that this verbal agreement was entered into that you have testified about in reference to discontinuing this suit, did Mr. Graham or Graham and Scott claim to hold some $80,000 of the bonds under the Helfenstein mortgage, which was sought to be made of some value by the opposition which was made to the St. Paul interest in this foreclosure?

(Objected to by complainants' counsel on the ground that there is no legal proof that there was any verbal contract ever made, and on the further ground that it is immaterial and incompetent.)

A. Never saw the bonds. It was reputed, and I think stated
452 in the pleadings in court, and I think that was where I saw it, that Graham & Scott some time before this verbal contract were the owners, I should say, of some seventy or eighty thousand dollars of these same identical Helfenstein bonds, and I think they held them as collateral for the indebtedness to collect which this suit was brought; that is my recollection. But whether or not they held them at the

time of this verbal agreement I do not know. I never heard of their disposing of them.

453 MILWAUKEE, WIS., *August 23rd*, 1873.

Parties appeared as before.

Upon the deposition of the witness Mariner being read over to him he desired to make the following statement:

On page 26 of the deposition of August 8 to the answer to the first question on that page I wish to add, "and in part a bond and mortgage for $6,750, executed by me to Goodrich, payable, I think, in five years from date, with interest at seven per cent., which mortgage I paid to Mr. Goodrich after I sold the property to the St. Paul company with a part of the bonds I received from the company. To the answer to the second question on page 49 of the same deposition I wish to add, "that is, get this suit discontinued as to us, Kneeland, Ludington, and Mariner."

Cross-examination by Mr. MURPHEY:

Q. What was the consideration agreed to be paid by you to Goodrich for this property?

A. The first purchase was one-half of the amount that a third of the property had cost.

Q. Do you know how much that was in dollars and cents?

A. No; I cannot tell at this lapse of time. My impression is that I paid $7,800 in farm mortgages and in bonds of the city of Milwaukee, and in addition to that I paid some money, but how much money

454 I cannot tell.

Q. Do you remember of paying anything else?

A. Not for the first sixth.

Q. Did you ever pay anything else for the other sixth?

A. Yes, sir; I conveyed to Mr. Goodrich the undivided half of six lots on the north end of the block, between 11th and 12th streets, fronting on Cedar street, and a lot and a half, I think, or parts of two lots, I cannot tell which now, in the block immediately west of that block, fronting on 12th street.

Q. Was that all?

A. No; I think as part of the same trade I gave him some more farm mortgages, but I cannot get at the amount of farm mortgages. The amount in all, according to my recollection, was about $18,000.

Q. For the whole third?

A. Yes; that is my recollection.

Q. When were those lots that you speak of conveyed to Goodrich?

A. The same date with his conveyance to me.

Q. What were those lots then worth?

A. They would have been appraised at that time at $2,200 apiece; perhaps $2,500 apiece.

Q. These were fractions of lots that you conveyed?

A. I conveyed the undivided half of six lots, and I think the

455 undivided half of two lots. They were large lots. The six lots would have sold readily for $15,000 four months before I conveyed them.

Q. At the time you conveyed these lots to him, and at the time he conveyed this undivided third of the lots in suit to you, I understand you had read and knew of the contents of the bill filed by Newcomb Cleveland.

A. I have so stated in my answers heretofore, and I think that statement is true.

Q. Did you take any security from Mr. Goodrich other than the conveyances against eventual loss?

A. No.

Q. Were the conveyances of these sixths by Goodrich to you made by warranty deed or by quitclaim deed?

A. I think that the deed was warranty. I think both our deeds were warranty deeds, but I may be mistaken.

Q. Can you fix the time (although I do not know but you have in your testimony already) when you made to Goodrich the first payment of $7,800 in bonds and mortgages?

A. No; I cannot.

Q. No more definitely than you have?

A. No; I have got no entry of payment in bonds. The first entry and the only one that I can find is an entry of $455 and some cents in 1857.

456 Q. What time in 1857?

A. March.

Q. Does the entry show what it is for?

A. "The other half paid by Goodrich," is the entry.

Q. You and he were interested in a good many things about that time?

A. I guess not about that time. We had been before that, but I do not remember of anything about that time.

Q. What was this bond and mortgage that you say you gave to Goodrich for?

A. That was part of the purchase-money of this sixth interest.

Q. Of the first purchase?

A. Of the second purchase. When I purchased the first sixth I paid all the purchase-money.

Q. That was paid in what?

A. In bonds.

Q. When you purchased the second sixth in November, 1857, you gave what?

A. I gave, among other things, a bond for $6,750, secured on this property and some property on the hill between 11th and 12th streets, and also it is my impression some lands in the country, but of that I cannot be sure.

Q. Now, Mr. Mariner, let us confine ourselves to this one thing. I do not understand it. You gave him a bond and mortgage for

457 $6,750. This was at the time you took the conveyances?

A. Yes; the 13th of November.

Q. What lots were included in that mortgage?

A. The same lots that are included in his conveyance to me.

Q. You mean the undivided third in suit here?

A. It is possible the undivided sixth, either one or the other; either the third or the sixth of those lots.

Q. Was that mortgage ever recorded?

A. No.

Q. Nor the bond?

A. No.

Q. Where is that bond and mortgage?

A. I do not know.

Q. Why was it not recorded?

A. That is a matter for Mr. Goodrich. I do not know why. I supposed it was until a very short time before I paid it.

Q. You did not pay it until after you sold to the St. Paul Company?

A. No, sir.

Q. When was it to be due and payable?

A. My impression is five years after date, but I cannot be sure about that. My impression is that it was past due.

Q. Have you inquired for that bond and mortgage?

A. No, sir.

448 Q. When you paid it why didn't you take it up?

A. I did.

Q. What did you do with it?

A. I took it and put it with my papers. I paid it. Took it up and put it with the file of papers that pertained to this property.

Q. Did you take a satisfaction of the mortgage?

A. No, sir; I think not.

Q. You don't know whether it covered the third or the sixth?

A. No; I do not at this time.

Q. Are you sure that it covers this property at all?

A. Yes.

Q. How much did you pay Goodrich on that mortgage?

A. I paid him the amount expressed on the face of it. I paid him in the bonds of the company that I received for the property.

Q. Principal and interest?

A. No, the amount of the face.

Q. Without interest?

A. I think there was a fraction over; the bonds were $500 bonds. I paid him no interest but that, and I gave him a receipt in addition to that for services that I had performed for him as attorney from time to time between the giving of the mortgage and the time of settlement.

Q. You think you paid him $7,000?

459 A. That is my recollection of it.

Q. Did you pay him anything else?

A. Nothing except the receipt I gave him.

Q. What was that?

A. A receipt for legal services between the date of the mortgage and the time it was settled.

Q. You say in your answer on page 49, which you have to-day explained, that when the existence of the contract which you say you understood was made between Kneeland and Graham was communicated to you, it was so communicated with a direction to see Carpenter and get it fixed, that is, see Carpenter and get the discontinuance; now who communicated this to you?

A. Moses Kneeland.

Q. And he communicated to you the fact, as I understand you to say, that an agreement was made whereby the suit was to be discontinued as to yourself and as to Kneeland and Ludington?

A. Yes, sir.

Q. And you were directed by Kneeland to get the matter fixed up and get the suit discontinued; now why didn't you do so as to Kneeland and Ludington the same as you did as to yourself?

A. I think I have already explained that. I went to Mr. Carpenter and asked him to give me a discontinuance. My recollection is

460 Mr. Carpenter put me off in some way; he neither said he would discontinue the suit or would not. I went to him two or three

times. I think he told me at one time that he would see Mr. Graham about it. Finally he told me that Mr. Graham did not want to trust Kneeland and Ludington, and did not want to discontinue the suit as to them until they had performed their part of the agreement. I told Mr. Kneeland and Mr. Ludington that, and asked them if I should get a discontinuance as to myself, and they assented to it.

Q. Then I understand you mean to say that the reason you did not get a discontinuance of the case as to Kneeland and Ludington was that Mr. Carpenter would not consent to it?

A. Yes; Mr. Graham rather; Mr. Carpenter gave him as his authority.

Q. Mr. Carpenter has been sworn in this case, as you know, and has distinctly testified that he never conversed with Mr. Graham about the discontinuance of this case as to any of the defendants until long after it was done. Now do you mean to say, Mr. Mariner, to-day, speaking from your memory, that Mr. Carpenter did give Mr. Graham as his authority for refusing to discontinue the case?

A. Well, perhaps that was a careless expression of mine, that
461 he gave Mr. Graham as his authority for refusing a discontinuance; but I mean to say this that Mr. Carpenter declined to discontinue this suit as to Kneeland and Ludington, because he said Graham would not trust them to carry out their share of the contract they had made with him.

Q. Then you mean to state to-day, do you, that Mr. Carpenter stated to you in this conversation that Kneeland and Ludington had made a contract with Mr. Graham that he, Graham, was afraid they would not live up to?

A. I cannot say that Mr. Carpenter at any time told me that Mr. Graham had made a contract with Mr. Kneeland. When I first went to Mr. Carpenter I explained why I came to him and made the demand or the request, which was Mr. Kneeland's statement to me that he had agreed with Mr. Graham that the case should be discontinued as to us. Mr. Carpenter did not at any time gainsay that, and the matter passed between us, asserted on my side and conceded on his.

Mr. MURPHY. The above is objected to as not responsive to my question.

Mr. MARINER (continuing). And so passing, Mr. Carpenter gave me as a reason for refusing to give me that discontinuance that Mr. Graham
462 was not willing to trust Kneeland and Ludington to carry out the contract.

(All of the above answer is objected to by complainants' counsel as not responsive to the question, except the first sentence.)

Q. Mr. Mariner, I desire to be fair to you and all the other parties in this case, and for that reason I wish to ask one more question, to know if we understand each other. I do not understand that you possess any personal knowledge of the making of a contract between Kneeland and Ludington and Graham and Scott in reference to the discontinuance of this suit?

A. No farther than I have stated.

Q. My question is as to personal knowledge. I ask if you profess any personal knowledge of that contract, except what Kneeland told you?

A. If you mean by that question whether I was present and heard the contract, I will say I was not. I do not pretend to ever have heard and such contract made, and I never understood that the contract was anything but verbal.

Q. And you understood that only from Kneeland?

A. I cannot answer that any more fully than I have done.

Q. Have you not said that a half dozen times over in this examination?

A. No, sir.

Q. Well, what do you say about it to-day?

463 A. When Mr. Kneeland told me of the existence of that contract, and told me to go to Mr. Carpenter and get a discontinuance in pursuance of it, and I stated the contract to Mr. Carpenter, who was Mr. Graham's attorney, and Mr. Carpenter did not gainsay the existence of it, I would ordinarily suppose that constituted a tolerable high degree of knowledge of the existence of the contract, especially with a solicitor as intelligent generally and in respect to the litigation in hand as Mr. Carpenter.

(The answer is objected to by complainants' counsel as not responsive, and the question repeated.)

A. I should suppose that would be understanding it from Mr. Carpenter and from Mr. Graham.

Q. Do you mean to say that Mr. Graham told you that he made such a contract as that with Kneeland and Ludington?

A. I cannot say that he did, other than through his solicitor, Mr. Carpenter, as I have stated.

Q. I understood you to say that Mr. Carpenter did not say so. Did I understand you right?

A. The answer is on record. I do not know that I have anything to add to it or take from it.

Q. You heard Mr. Carpenter and Mr. Graham testify in this case, did you not?

A. Yes, sir.

Q. And cross-examined them both?

A. I think so. I had a chance to at all events.

464 Q. Now, after they had given their testimony you subsequently testified in this case, and you then stated, if I understood you aright, that you had no doubt of the fact that a contract, such as you say Kneeland told you he made with Graham, was, in fact, made, notwithstanding Graham swore he never made it, and Carpenter that he never heard of it. Now, to-day, in view of the intervening time you had to reflect upon the subject, are you still in doubt that such a contract was made?

A. The expression "no doubt" is one of common use, and perhaps, abstractly speaking, it is not entirely correct. My idea of the existence of such a contract, of course, would be a little more clear and plain if Mr. Carpenter and Mr. Graham should say a contract had been made. At the same time I am satisfied, as men ordinarily are about things that are not capable of demonstration, of the existence of that contract, and I am so satisfied because I was present and took the part I have stated in respect to requesting its fulfillment. If the contract had been written out and I had it before me I should feel surer than I am now. I could say then, and be exactly correct, that I had no doubt of the existence of it. Mr. Carpenter might have misapprehended or misunderstood me when I spoke to him; Mr. Kneeland might have mis-

465 represented the contract to me in the beginning; and yet I cannot very well see how so many things should concur pointing to the existence of the contract, and yet the contract not exist.

Q. So that you cannot say to day that you are without doubt upon that point?

A. Speaking exactly, I cannot say that I am without doubt; speaking as men ordinarily do, I think I am reasonably free from doubt upon the subject. I should not want to hang a man upon my idea of the existence of that contract, but I should certainly find a verdict against him in damages.

Q. Don't you think, upon the whole, that it is fair to the oath of the witnesses Graham and Carpenter that they should be permitted to inspire a doubt when put in contradistinction to the interested declaration of a man who is charged with confederating with other trustees to swindle the corporation out of its property; don't you think so much is fairly due to the oaths of these men?

WITNESS. I do not know whether you mean to insult me or not.

Mr. MURPHY. I answer I do not.

WITNESS. Well, then, I want you to make your question a little plainer. It seems to me now as if it was designed to be personally insulting.

466 Mr. MURPHY. I do not know why you should so understand it. (Question repeated.)

A. I do not think I quite apprehend your question. If all the information I had in respect to this contract was the statement on one side of Mr. Kneeland, who is interested and is charged as Mr. Murphy says, and the statements of Mr. Carpenter and Mr. Graham on the other hand, I should take the statements of Mr. Carpenter and Mr. Graham, though Mr. Kneeland was my client. But I had, in addition to the declaration of Mr. Kneeland, the knowledge of facts which convinced me at the time that this contract existed, and which facts I cannot now overlook.

467 AUGUST 13TH, 1873.

EDWIN H. GOODRICH recalled on the part of the plaintiff, and it is stipul'ed that the testimony in this cause may be taken by either party up to the first Monday of January, without prejudice to either party.

A. I have been examined in this cause once before.

Q. When did you first learn, and from whom did you learn, of the purchase by C. D. Nash of the La Crosse Railroad Company of the lots described in the complaint?

A. I learned of it at the time it was made from the directors of the company.

Q. What directors?

A. Stoddard Judd, Byron Kilbourn, James Ludington, Edwin Townsend, Moses Kneeland, or from some or all of those persons.

Q. Were you at the time an officer, and, if so, what officer of the company.

A. I think I was a director and secretary of the company, and may have been a member of the executive committee, but cannot state positively.

468 Q. Did you hear at that time, who it was that Nash bought lots for?

A. I did not.

Q. Did you not, upon reflection, hear that he bought them for James Ludington and Moses Kneeland, about the time of the purchase?

A. I have no recollection that he did upon further reflection; I think I did hear at the time of the purchase that Mr. Nash bought the lots for himself & C. D. Cook.

Q. From whom did you hear that?

A. From some one or all of the persons whom I have named.

Q. Then you understood that although Nash was nominally the sole purchaser that he was not, in fact, purchasing the same solely for himself?

A. I understood upon reflection, as I have stated, that he was purchasing for himself and C. D. Cook.

Q. Did you know about the time, subsequently to the purchase by Nash, of his selling those lots to Moses Kneeland?

A. I have no recollection of any such circumstances.

Q. Do you mean to say that you did not know of Nash's conveying the whole or some portion of those lots to Moses Kneeland soon after he purchased them?

469 A. I don't mean to say that I did not know it at the time; I do say, that I have no recollection of any such circumstance.

Q. Have you any doubt that you did know of it at the time?

(Objected to by Mr. Mariner.)

A. Yes, I have doubts of my knowing of it at the time.

Q. Have you doubts of knowing it about the time?

(Objected as above.)

A. I don't think I would be likely to have known it any time previous to my becoming an owner in the property.

Q. Was it not a notorious matter, talked about by outside parties, and therefore known to you as an officer of the La Crosse company, that these lots were bought by Nash for Ludington and Kneeland, and with means furnished by them fraud'ently, and that such talk continued from about the time of the purchase by Nash, through 1855, 1856, and 1857, & finally culminated in a suit in '56 or '57 to set the sale aside for fraud?

A. It may have been a notorious matter during the time you state, and it may have been known to me; but I don't recollect to have heard of it until about the time of the commencement of the suit you refer to.

470 Q. Did not Mr. Mariner tell you about the time of this purchase by Nash that Nash had purchased for Moses Kneeland, or words to that effect?

A. I don't recollect that he did.

Q. By way of refreshing your recollection, I repeat the question, and ask if you do not remember that he did, for the reason that he claimed to have some contract for purchase of the La Crosse company for these lots himself; and was quite indignant because Kneeland, through Nash, had got the lots away from him.

A. Since you state that Mariner claimed that he had a claim for purchase of the lots, I recollect that he stated to me that he had; but I do not recollect that he told me that Nash had bought the lots for Kneeland, or that Kneeland had got them away from him through Nash.

Q. Do you not recollect that he had complained of Kneeland in some way as being privy or responsible for the transaction by which he was deprived of the lots?

A. I do not now recollect of his ever having made any such complaint, but do recollect that he expressed disappointment at not getting the lots; I don't recollect that he charged his failure in getting them upon any particular individual; he may have done so, & I forgotten it.

471 Q. When did you purchase and from whom an interest in these lots and take a deed?

A. My recollection is that I had purchased in 1856, I think, from By-

ron Kilbourn, at any rate I paid him for the lots; I cannot say whether he or Dr. Judd was president of the La Crosse Railroad at the time, but Kilbourn was connected with it as director.

Q. From whom did you take the conveyance of these lots?

A. I cannot tell, the record will show; I cannot tell whether it was Moses Kneeland I bought the lots of; I could not tell who I paid for them, if I hadn't within a few months past found a copy of the note that I gave Kilbourn for them.

Q. Was not C. D. Cook a director of the La Crosse Railroad Company in 1855 and 1856?

A. I cannot state; I recollect that he was at one time, in the early days of the company.

Q. Have you any doubt now that at the time you made this purchase you then knew a chain of title by which you were to get the lots?

A. No; I must have known at the time.

Q. In respect to your memory as to what transpired so long ago, I suppose you do not pretend to be accurate as to your recollections?

A. No.

472 Q. Is it not probable that about the time of the Nash purchase and the sale by him to Kneeland, that you had heard it said that Nash was buying these lots for some one else, and you have forgotten it?

(Objected to as irrevelent, incompetent, and immaterial.)

A. It is possible, but I have no recollection.

Q. Were you a member of the board of directors of the La Crosse Railroad Company at the time of the sale of these lots to Nash?

A. I have no recollection that I was; I was a member from the time of the organization of the company to '57 or '58.

Q. Were you a member of the executive committee of that board that negotiated the sale of these lots to Nash?

A. It is probable that I may have been, but I cannot say positively.

Q. Was that sale not in whole or in part negotiated through the executive committee of the board of directors of the La Crosse Railroad Company?

A. My recollection is that it was made by the executive committee of the board.

Q. You knew, did you not, at the time the consideration that was paid for these lots by Nash?

A. I presume I did, but cannot now tell.

Q. Was Byron Kilbourn interested in the purchase of these lots at the time Nash bought them as a purchaser?

473 (Objected to as incompetent, immaterial, & irrevilent, & is assuming knowledge on the part of the witness.)

A. I do not know.

Q. You bought, you say, of him. Where did he get his title?

A. I did not say so; I paid him; I don't know who I bought from.

Q. If, as you say, you paid him for those lots, what makes you doubt that you bought of him?

A. I do not doubt it; what I say is that I did not know who I bought from; I am not certain who I bought from.

Q. If you paid Kilbourn, as you say you did, why do you say you do not know who you bought from?

A. I say so because I do not know who I bought from; I may have received the title from some other party and been ordered to pay Kilbourn.

Q. Have you not lately had your attention called to the abstract of title of these lots & what it shows?

A. I have not, and I did not know there was such a document in existence until I came into this room to-day, and only know it now by hearsay.

Q. Do you not know or have you no information of a comparatively recent date which refreshes your recollection to the extent of showing you took your conveyance from Moses Kneeland of these lots?

A. I have not, and I don't know who I took the conveyance from.

474 Q. Do you not know that you did take it from Moses Kneeland?

A. No.

Q. Did you ever pay him for those lots or any part of them?

A. No; not to my recollection.

Q. Did you ever see any deed from any one to Byron Kilbourn of these lots or any part of them?

A. Not that I recollect of.

Q. Then you did have information, did you not, at about the time of the purchase by Nash, that he was buying these lots in part for himself and part for one of the directors of the La Crosse Railroad Company, as the fact is that Cook was at the time a director?

A. I do say, as I before stated, that Nash bought the lots for himself and C. D. Cook.

Q. When did you first hear that these lots were purchased by Nash for the benefit of Kneeland and Ludington, or can you tell?

A. I cannot tell any more definitely than I have stated about the time; the time the Cleveland suit was commenced.

Q. Do you mean now finally to state and have the court understand that you had no knowledge nor any information prior to the time that you purchased and take the conveyance of an undivided third of

475 these lots that it was claimed that the purchase by Nash was fraudulent and void, as having been done in whole or part for the benefit of some of the officers of the La Crosse Railroad Company?

A. I mean to say that I did not know, or have any knowledge, prior to the time that I purchased an interest in the property, that the sale to Nash was fraudulent, and for the benefit of any officer of the said company. I may have heard it said prior to that time, but had no knowledge of fraud in the sale; and if I had, I should not have bought the property; it is not probable that I would.

Cross-examined by Mr. MARINER:

Q. When did you succeed Burnell as secretary of the La Crosse Railroad Company?

A. I cannot state.

Q. When did you pay Kilbourn for the one-third of the property?

A. My recollection is that it was him I paid from having seen the copy of the note, and it must have been during the year 1857.

Q. When did Ephraim Mariner pay you for the property?

A. When did the St. Paul Railroad Company complete its track into the Union depot?

Q. In '65, I think.

A. Well, I can answer in this way. It was subsequent to the completion of the track and on the purchase of the depot grounds of

476 the Union depot. Mr. Mariner made the last payment in the bonds of the Milwaukee and St. Paul Railway Company that we knew as the real-estate purchase-money bonds. I was manager of the company when the depot grounds were bought, and the payment that

Mariner made me—the last payment was in the bonds of that company, which had been paid to Mariner, as I understood, as a part of the purchase money of the property.

Q. What amount of bonds?

A. $6,500.

Q. When was the rest of the purchase money paid, the purchase price, by Mariner, to you?

A. My recollection is that all previous payments were made by the transfer of other property.

Q. And for mortgage bonds?

A. I do not recollect about that.

Q. Whatever it was, it was paid before or at the time of the execution of the deed to Mariner?

A. I don't recollect the time of the execution of the deed. I will say that my impression is that there were two conveyances made to Mariner of the property—the first of one-sixth, I think, or one-half of my interest, which was paid for by Mariner to me in other real estate and farm bonds; and when the second conveyance of the balance of my interest was made to him, he executed a bond and mortgage to me for $6,750, as the consideration for the conveyances. This is my recollection.

477 I may have agreed to sell Mariner the property previous to the execution of the deed, and receive in part payment other property and bonds referred to, and subsequently executed the deed for one-third interest in the whole property, and took the bond and mortgage hereinbefore stated or referred to in settlement for both deeds. Mariner's bond was an ordinary mortgage bond, conditional to pay so many dollars. At the time that mortgage was paid I was worth 50,000 and upwards.

Q. Since then you have become comparatively impecunious?

A. Yes.

Q. When did you become so?

A. About 1869 or 1870.

Q. Could you now repay that sum of money, or could you at any time since '69?

A. I cannot and could not.

Q. Have you any recollection of hearing it said before you purchased this property that there was any fraud in that purchase by Nash, for the reason that it was for the benefit for any one of the directors of the La Crosse and Milwaukee Railroad Company, or for any reason; and, if so, from whom did you hear it?

A. I think I said in my direct examination that I did not. Still I said I may have heard it. I said in my direct examination that I had no knowledge of any fraud, but that I might have heard it said that there was fraud, but I am unable to state by whom it was said or when.

478 Q. Can you now recollect any such statement by any person; and, if so, by whom?

A. I cannot recollect any such statement.

Q. Was the price that you paid Kneeland [in pencil Kilburn] a fair valuation of the property?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I think it was.

Q. Can you recollect the amount?

A. It was between 11 and 12,000.

Q. Do you remember the value of the property down there about that time?

A. No. I never was very familiar with the value. I know I never got back the money I put in, with interest.

Redirect examination:

Q. What makes you think there were two deeds of this property to Mariner?

A. I don't know that I can tell the reason, but I was under the impression that I first sold him one-half of my interest in exchange for other property.

Q. When was this mortgage of $6,750 given by Mariner to you, and on what property?

A. The time I executed the last conveyance, or, if two, was not signed at the time I executed the conveyance of the whole property to him, and the mortgages was upon the property I conveyed to him.

479 Q. What became of that mortgage?

A. Mr. Mariner paid it, and I surrendered it to him.

Q. Was it recorded?

A. It was not, that I recollect of.

Q. How much did you sell this to Mariner for?

A. My recollection is that it was about $14,000—between 14 and $15,000.

Q. How long was it after you bought it that you sold it?

A. I cannot tell you from recollection, and have no way to ascertain, except by the records.

Q. How much was this note that you paid Kilbourn?

A. Between 11 and 12,000. It was not the note I found, but only a copy of it. I cannot say what became of the note; possibly it was destroyed when paid.

Q. Are you sure that it was actually given and paid?

A. I am sure.

Q. You don't know how Mariner paid you, except by the mortgage of $6,750?

A. I cannot tell the amount. My recollection is it was paid in other property, and some farm mortgages.

Q. I understand you to say that you did not recollect about the bonds & mortgages till Mariner made the suggestion, and you then said

480 you did not remember?

A. I am not positively certain about that—that is, the payment in farm-mortgage bonds—because we have had a great many dealings in farm mortgages.

Q. Mr. Mariner has been your confidential friend and adviser since 1855?

A. Yes, and I don't know but before.

Q. That's all.

EDWIN H. GOODRICH.

DECEMBER 16, 1873.

Present, N. S. Murphy, for compl't.

EPHRAM MARINER recalled.

Question. How long have you lived in Milwaukee, Mr. Mariner—since when?

Answer. Since June, '50.

Question. You remember about the time of the purchase of these lots in question by Nash, of the La Crosse Company?

Answer. Yes, sir.

Question. Did you, soon after that purchase, hear it said, and was it not

more or less a matter of common rumor in Milwaukee respecting it, that the purchase was made by Nash for the benefit of some of the officers of the La Crosse Company, and in fraud of the rights of the company and its creditors?

Answer. I did not hear it so said, and it was not a matter of common rumor.

481 Question. Is that all of your answer?

Answer. As I understand the question, yes, sir.

Question. Do you not know that it was talked about by different persons about that time & that it was said and claimed that Mr. Nash had bought this property for the benefit of Kneeland, Ludington, and some of the officers of the La Crosse Company?

Answer. All that I have ever heard about it was a conversation between Mr. Goodrich and myself in relation to it that I detailed to you one day, here in this room, I think. I never heard anybody else say anything about it until about the time of the filing of the Cleveland bill.

Question. Will you state briefly what that conversation was that you say you have heretofore given me, as occurring between yourself and Mr. Goodrich?

Answer. I had made a proposition to the company to buy a part of these lots, which was made at the suggestion and in pursuance of negotiations I had with Dr. Judd, the then president of the company, and which negotiation had terminated in verbal agreement between the doctor and me—on my part that I was to buy, and on the

482 part of the company that it was to sell, certain of these lots. I heard directly of this sale to Mr. Nash, that the lots had been sold to him, and I heard the terms of the sale and that payment had been made by Mr. Nash. I did not suppose at the time that Mr. Nash had the securities to pay which were paid upon the purchase of that property. The sale to Mr. Nash, of course, prevented the carrying out of the bargain that I had made with Dr. Judd. I was annoyed about it, and I went to Mr. Goodrich, or met him in East Water street, and complained that the contract with me had not been carried out. I told him I didn't think it was right—I cannot tell in just what words—and I told him that I didn't believe that Mr. Nash was the real purchaser; that I didn't believe he had the bonds to pay with. I had then learned that the bonds had been paid. I knew that Moses Kneeland had bonds enough to pay—to make that payment—if it was on his account. Moses Neland and I were not on friendly terms then, and I thought that he had got Mr. Nash to make the purchase to thwart me, because he thought I wanted to buy it. I told Mr. Goodrich that in so many words, I gues', or in substantially those words. Mr. Goodrich told me that he

483 would find out how the fact was, and if that purchase was made for the benefit of Mr. Kneeland, Mr. Kneeland should either let me have the lots that Doctor Judd had agreed to sell me, or he would make a fuss about it. A short time afterwards I met Mr. Goodrich, and he told me he had found out, and that he was satisfied that the purchase was made by Mr. Nash on his account and on the account of Mr. C. D. Cook. That is all that I heard in respect of that matter till some time in 1857. I can recall nothing now earlier than the filing of Mr. Cleveland's bill. That is the substance of the conversation with Mr. Goodrich. That is what I detailed to you.

Question. Might this same state of facts which you then told Goodrich you supposed existed with respect to the purchase of those lots by

Nash have been about that time the subject of talk with other parties, and in your presence, and with you, and you now to-day have forgotten it?

Answer. I hardly think it could

Question. You are only able to remember the conversation with
484 Goodrich primarily from the circumstance that you felt indignant, and that you had been misused in being deprived of the lots yourself; is not that the light in which you remember the conversation?

Answer. I don't think that is primarily; I think the primary thing that makes me remember is that it was a matter in which I was interested. It was a matter touching what was my business.

Question. And you had been misused, as you thought?

Answer. I would not have remembered the misusage on that account if it had not touched my business. I do not think the matter of misuse had so much to do with it as the business.

Q. If you had not had that business relation with the company, and with respect to those lots, that you say you did have, would you to-day probably have been able to recall a conversation with Mr. Goodrich upon the subject held as long ago as that?

Answer. It would depend upon what the subject was.

Question. This subject?

Answer. This was my business.

Question. If you had not had that business relation with the
485 company, and with respect to those lots, that you say you did have, would you to-day probably have been able to recall a conversation with Mr. Goodrich upon the subject held as long ago as that?

Answer. Certainly the conversation would not have interested me hadn't I had it.

Question. Supposing you hadn't had this business relation with the company in regard to the lots, which you say you had, and had heard individuals say in substance, as long ago as that, that these lots were purchased by Nash for the benefit of somebody else, and it was not a bona-fide purchase, would you probably have remembered that conversation to-day?

Answer. O, no; if it had been touching somebody's else business, it is hardly likely I would. If it had been something for myself, that would have concerned me a little; I would have remembered it.

Question. Do you mean to declare, Mr. Mariner, that you never did hear any conversation or rumor to the effect that Nash's purchase was not for himself in good faith as long ago as that, or do you mean
486 to say that you have no recollection of it? What do you mean to be understood on that subject?

Answer. Why, I mean to say that, so far as anybody can speak of the transaction, that I never did have any such suggestion from anybody.

Question. That's all.

E. MARINER.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being, with volume two accompanying the same, a full and complete transcript of

the record and proceedings in the case of Lawrence G. Graham et al. vs. The La Crosse & Milwaukee R. R. Co. et al.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this ninth day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the 102nd.

EDMUND KURTZ, *Clerk.*

487 *Exhibit No.* 1.—*C. D. Nash, test'y, page* 13.—*Fr. Bloodgood, ex'm'r.*

Articles of agreement made this eighth day of September, in the year eighteen hundred and fifty-five, between the La Crosse and Milwaukee Railroad Company, party of the first part, & C. D. Nash, party of the second part, witness, as follows:

1. Said party of the first part has this day sold to the said party of the second part all their estate, right, & interest in lots nine (9), ten (10), & eleven (11) in block three (3), and lots one (1), two (2), & three (3) in block forty-seven (47), all in the fifth ward of the city of Milwaukee, for the price of fifteen thousand dollars.

2. The said party of the second part agrees to pay therefor the said sum of fifteen thousand dollars in full-paid shares of the capital stock of the said party of the first part; that is to say, one hundred & fifty shares of said stock of one hundred dollars each fully paid to the said party of the first part upon the determination of a suit in chancery now pending in the circuit court of Milwaukee County, wherein George H. Walker is complainant & the said party of the first part is defendant.

488 3. The said party of the second part agrees to take charge of the said suit in chancery and to conduct the same with all due diligence to a determination at his own risk & expense.

4. Upon the determination of the said suit, if there shall be a decree therein for the defendant, the said party of the first part shall upon payment of the said sum of fifteen thousand dollars as aforesaid execute & deliver to the said party of the second part a quit-claim deed of conveyance of all their right, title, & interest in the said lots of land, subject to all outstanding titles, equities, liens, & incumbrances whether arising by grant, tax, tax sale or otherwise.

5. Upon the determination of the said suit, if there shall be a decree therein reinvesting the title to the said lots in the said complainant therein, or decreeing a reconveyance thereof by the said defendant therein, the said party of the first part shall upon payment of the said sum of fifteen thousand dollars as aforesaid assign over to the said party of the second part whatever money or securities the said complainant may be decreed to pay or deliver to the said defendant as a condition to such decree.

489 6. In case of any compromise or adjustment of the subject-matter of the said suit between the said complainant therein & the said party of the second part the said sum of fifteen thousand dollars shall become immediately payable in manner aforesaid.

In witness whereof the said parties have signed and sealed these presents the day & year first above written.

STODDARD JUDD,
President of the La C. & M. R. R. Co.
CHARLES D. NASH.

Sealed & delivered in presence of—
P. M. JOHNSON.
S. C. JOHNSON.

STATE OF WISCONSIN,
Milwaukee County, ss:

On the eighth day of September, A. D. 1855, personally come Stoddard Judd, president of the La Crosse and Milwaukee Railroad Company, and acknowledged the foregoing deed as the deed of said company, and Charles D. Nash, both of whom are known to me as the persons who executed the foregoing deed, and acknowledged the same to be his free act & deed.

P. M. JOHNSON,
490 *Notary Public, Ozakuee Co., Wis.*

Received of C. D. Nash fifteen thousand dollars in full of all claims on the within contract or obligation.
Dated July 21st, 1856.

LA C. & M. R. R. CO.,
By MOSES KNEELAND,
V. Prest.

491 *Exhibit No. 2, p. 14, C. D. Nash.—Fr. Bloodgood, ex'm'r.*

Know all men by these presents that I, Moses Kneeland, of Milwaukee, am held and firmly bound unto Charles D. Nash, of the same place, in the penal sum of ten thousand dollars lawful money, for which payment well and truly to be made unto him the said Charles D. Nash, his executors, administrators or assigns, I bind myself, my executors and administrators forever, firmly by these presents. Sealed with my seal and dated at Milwaukee, this twenty-fourth day of September, A. D. 1855.

The condition of the above obligation is such that whereas the said Charles D. Nash did on the eighth day of September, inst., become the purchaser from the La Crosse & Milwaukee Railroad Company of certain real estate of which said company, on the said eight' day of September, executed & delivered to said Nash a deed of conveyance; and whereas upon such purchase the said Nash did execute & deliver to said railroad co. an agreement in writing, a copy whereof is hereunto annexed and marked A and made a part hereof, wherein is described said real estate; and whereas the said Charles D. Nash has bar-
gained and sold the said real estate to the said Moses Kneeland,
492 & has of even date herewith executed & delivered to the said Moses Kneeland a deed of conveyance thereof;

And whereas also, on or about the said eight' day of September, the said Charles D. Nash agreed with the said La Crosse & Milwaukee Railroad Company for the purchase of certain other real estate, and on which day the said Nash and the said railroad company entered into articles of agreement in writing, a copy whereof is hereunto annexed and marked B as aforesaid, and all his the said Nash's right, title & interest in and to the real estate therein described, or in and to the subject-matter of the said contract or agreement:

Now if the said Moses Kneeland shall well and truly pay or cause to be paid the mortgages mentioned in said agreement, a copy whereof is marked A as aforesaid, punctually at the time or times when they may by their tenor become due & payable, & shall well & truly & at all times do & perform all things which he the said Charles D. Nash is or may become liable to do & perform according to or in virtue of the said agreement, a copy whereof is marked A as aforesaid, or by reason thereof, and shall also well & truly and at all times do & perform all

493 things which he the said Charles D. Nash is or may become liable to do or perform according to the terms and in virtue of or reason of the said contract or agreement, a copy whereof is marked B as aforesaid, and shall also well & truly, & all times hereafter fully and sufficiently indemnify & save harmless him the said Charles D. Nash, his heirs, executors and administrators, from all damage, costs, suits, trouble or expense, by reason of or growing out of the purchase and conveyance by him first above mentioned, or by reason of or growing out of either of said agreements, copies whereof are marked A & B as aforesaid, or by reason of or growing out of any and all the premises hereinbefore recited, then this obligation to cease & be void, else to remain in force.

MOSES KNEELAND. [L. S.]

In presence of—
E. S. HAGAR.

Paper marked A, referred to in the foregoing bond.

The La Crosse & Milwaukee Railroad Company having this day conveyed to me lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14 in block
494 155; lots 1 & 4 in block 156, the undivided $\frac{1}{8}$ of block 157, except lots 8, and of the bayou adjoining said last mentioned block, and thence running to the Milwaukee River; the undivided $\frac{1}{8}$ of lots 8, 9, 16, 17, 10, 12, 13, 14 & the east half of 15 in block 158, and the said lots or some of them are subject to the payment of two mortgages executed by the Milwaukee, Fond du Lac & Green Bay Railroad Company, the one to secure payment of a note of the said Milwaukee, Fond du Lac & Green Bay R. R. Company, bearing date the 27th day of August, 1853, payable in five years to Edward D. Holton or bearer, at the Farmers' & Millers' Bank in the city of Milwaukee, for the sum of four thousand dollars ($4,000), & eight per cent. interest, & the other to secure a note of the same company bearing date the 12th day of September, 1853, payable in three years to John B. Lee, or order, at their office in the city of Milwaukee, for the sum of eight hundred dollars, with ten per cent. interest, which notes the said La Crosse & Milwaukee Railroad Company are liable to pay, and I have agreed upon such conveyance to me, & in consideration thereof to pay; now I do hereby, in consideration of this promise and of one dollar to me paid, agree to pay the said two several promissory notes of the Milwaukee, Fond du Lac & Green Bay Railroad Company, & do indemnify and save harmless the said La Crosse & Milwaukee Railroad Company from the payment thereof.

495 In witness whereof I have hereunto set my hand and seal this eight' day of September, in the year eighteen hundred and fifty-five.

(Signed) CHARLES D. NASH. [SEAL.]

Signed, sealed & delivered in presence of—
(Signed) E. G. RYAN.

496 Paper B, referred to in the foregoing bonds.

Articles of agreement made this eight' day of September, in the year eighteen hundred and fifty-five, between the La Crosse & Milwaukee Railroad Company, party of the first part, and C. D. Nash, party of the second part, witnesseth as follows:

1. Said party of the first part has this day sold to said party of the second part all their estate, right and interest in lots nine (9), ten (10), & eleven

(11), in block three (3), and lots one (1), two (2), and three (3), in block forty-seven (47), all in the fifth ward of the city of Milwaukee, for the price of fifteen thousand dollars.

2. The said party of the second part agrees to pay therefor the sum of fifteen thousand dollars in full-paid shares of the capital stock of the said party of the first part, that is to say, one hundred and fifty shares of said stock of one hundred dollars each fully paid, to the said party of the first part upon the determination of a suit in chancery now pending in the circuit court of Milwaukee County, wherein George H. Walker is complainant, and the party of the first part is defendant.

3. The party of the second part agrees to take charge of the said suit in chancery & to conduct the same with all due diligence to a de-
497 termination at his own risk and expense.

4. Upon the determination of the said suit if there shall be a decree therein for the defendants, the said party of the first part shall, upon payment of the said sum of fifteen thousand dollars as aforesaid, execute and deliver to the said party of the second part a quit-claim deed of conveyance of all their rights, title and interest in the said lots of land, subject to all outstanding titles, equities, liens, incumbrances, whether arising by grant, tax, tax sale or otherwise.

5. Upon the determination of said suit, if there shall be a decree therein reinvesting the titles to the said lots in the said complainant therein, or decreeing a reconveyance thereof by the said defendants therein, the said party of the first part shall, upon payment of the said sum of fifteen thousand dollars as aforesaid, assign over to said party of the second part whatever money or securities the said complainant may be decreed to pay or deliver to the said defendant as a condition to such decree.

6. In case of a compromise or adjustment of the subject matter of the said suit between the said complainant therein and the said party of the second part, the said sum of fifteen thousand dollars shall become immediately payable in manner aforesaid.

498 In witness whereof the said parties have signed and sealed these presents the day and year first above written.

(Signed) STODDARD JUDD,
President of the La C. & M. R. R. Co.

(Signed) CHARLES D. NASH.

Sealed and delivered in presence of—
(Signed) P. M. JOHNSON.
J. C. JOHNSON.

STATE OF WISCONSIN,
Milwaukee County, ss:

On the eighth day of September, A. D. 1855, personally came Stoddard Judd, president of the La Crosse & Milwaukee Railroad Company, and acknowledged the foregoing deed as the deed of said company, Charles D. Nash, both of whom are known to me as the persons who executed the foregoing deed, and acknowledged the same to be his free act and deed.

P. M. JOHNSON,
Notary Public, Ozaukee Co., Wisc.

Received of C. D. Nash fifteen thousand dollars in full of all claims on the within contract or obligation.

Dated July 21, 1856.

LA C. & M. R. R. Co.
By MOSES KNEELAND,
V. Pres't.

499 To the La Crosse & Milwaukee Railroad Co.:

I propose to purchase from the company the following described real estate:

Lots 9, 10, 11, block 3, 5th ward.
" 1, 2, 3, " 47, 5 "
" 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, in block 155, 4th ward.
" 1 & 4, " " 156, " "
Undivided ½ of block 157, except lot 8, 4th ward.

All the interest of the co. in bl'k 157, and in the land embraced in the bayou adjoining said bl'k and running out to the Milwaukee River, ⅓ lot 8, 9, 16, 17, in bl'k 158, 4th ward; lots 10, 12, 13, 14, and the east ½ 15, in bl'k 158, in 4th ward, for $25,000, payable as follows:

$10,000 in farm mortgages of La Crosse Railroad on delivery of deed. $15,000 in La Crosse Railroad stock at the termination of the suits now pending in which Geo. H. Walker is compl't & the La Crosse & Milwaukee R. R. Co. is def't, in relation to the 6 lots first described, all the premises, except the 6 lots in block 3 & 47, to be conveyed at once by deed or by agreement; those in bl'k 3 & 47 to be conveyed by quitclaim deed when Walker's suit is decided, if the suit is decided in favor of the co.; if the co. shall be decreed to convey said lots to Walker,
500 then I am to have whatever payment or securities Walker may be decreed to pay or deliver to the co. as a condition for such conveyance. This proposition, if accepted, to be reduced to the form of an agreement between the parties, and signed and delivered with the deed first mentioned at once.

July 18, 1855.

C. D. NASH.

Whereas I have this day assigned to Moses Kneeland a certain contract or agreement, made the eighth day of September, inst., between myself and the La Crosse & Milwaukee Railroad Company, and said Kneeland has executed to me his bond of indemnity against liability by reason of or on account of my covenants and agreements in said contract, I have this day received from said Moses Kneeland ten thousand two hundred dollars in full paid by stock; that is to say, one hundred and two shares of one hundred dollars each of stock of the La Crosse & Milwaukee Railroad Company, drawing interest from
501 the first day of July last, and also said Kneeland's note or obligation or demand for forty-eight shares of like stock, which stock and note or obligation I hold as collateral to said Kneeland's bond to me, and which, upon maturity of my said contract with the said railroad company, I am entitled to use in discharge of my obligations in such contract contained.

Dated Milwaukee, 24th September, 1855.

Said bonds are No. 173, 174, 175, 177, 178, 155, 204, 156, 571, 572, 430, 157, 536.

C. D. NASH.

September 26, 1855. Paid to C. D. Nash and endorsed on my note one thousand dollars of this note, leaving the note $3,800.

502 *Exhibit No. 3.—C. D. Nash's test'y, p. 20.—Fr. Bloodgood, ex'm'r.*

Bond of indemnity, &c. Moses Kneeland to Chas. D. Nash.

Know all men by these presents that I, Moses Kneeland, of Milwau

kee, am held and firmly bound unto Charles D. Nash of the same place, in the penal sum of ten thousand dollars, lawful money, for which payment well and truly to be made unto him, the said Charles D. Nash, his executors, administrators, or assigns, I bind myself, my executors and administrators, forever firmly by these presents. Sealed with my seal, and dated at Milwaukee, this twenty fourth day of September, A. D. 1855.

The condition of the above obligation is such, that whereas the said Charles D. Nash did, on the eighth day of September, instant, become the purchaser from the La Crosse and Milwaukee Railroad Company of certain real estate of which said company on the said eighth day of September executed and delivered to said Nash a deed of conveyance; and whereas upon such purchase the said Nash did execute and deliver to said railroad company an agreement in writing, a copy whereof is hereunto annexed and marked A and made a part hereof, wherein is described said real estate; and whereas the said Charles D. Nash has bargained and sold the said real estate to the said Moses Kneeland, and has of even date herewith executed and delivered to the said Moses Kneeland a deed of conveyance thereof;

503

And whereas also, on or about the said eighth day of September, the said Charles D. Nash agreed with the said La Crosse and Milwaukee Railroad Company for the purchase of certain other real estate, and on which day the said Nash and the railroad company entered into articles of agreement, in writing, a copy whereof is hereunto annexed and marked B and made a part hereof, and wherein is described said last mentioned real estate; and whereas said Charles D. Nash has this day sold and assigned to said Moses Kneeland the said contract or agreement, a copy whereof is marked B, as aforesaid, and all his the said Nash's right, title and interest in and to the real estate therein described, or in and to the subject matter of the said contract or agreement:

Now, if the said Moses Kneeland shall well and truly pay or cause to be paid the mortgages mentioned in said agreement, a copy whereof is marked A, as aforesaid, punctually at the time or times when they may by their tenor become due and payable, and shall well and truly and at all times do and perform all things which he the said Charles D. Nash is or may become liable to do and perform according to or in virtue of the said agreement, a copy whereof is marked A, as aforesaid, or by reason thereof, and shall also well and truly and at all times do and perform all things which he the said Charles D. Nash is or may become liable to do and perform according to the terms and in virtue of or by reason of the said contract or agreement, a copy whereof is marked B, as aforesaid, and shall also well and truly and all times *and all times* hereafter fully and sufficiently indemnify and save harmless him, the said Charles D. Nash, his heirs, executors and administrators, of and from all damage, costs, suits, trouble or expense, by reason of or growing out of the purchase and conveyance by him first above mentioned, or by reason of or growing out of either of said agreements, copies whereof are marked A and B as aforesaid, or by reason of or growing out of any and all the premises hereinbefore recited, then this obligation to cease *to* be void, else to remain in force.

504

MOSES KNEELAND. [SEAL.]

In presence of—
E. S. HAGAR.

505 Paper marked A, refer'ed to in the foregoing bond.

The La Crosse and Milwaukee Railroad Company having this day conveyed to me lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14, in block 155; lots 1 & 4, in block 156; the undivided ⅓ of block 157, except lots 8 and of the bayou adjoining said last-mentioned block, and thence running to the Milwaukee River; the undivided ⅓ of lots 8, 9, 16, 17, 10, 12, 13, 14, and the east half of 15, in block 158; and the said lots, or some of them, are subject to the payment of two mortgages executed by the Milwaukee, Fond du Lac and Green Bay Railroad Company; the one to secure payment of a note of said Milwaukee, Fond du Lac and Green Bay R. R. Company, bearing date the 27th day of August, 1853, payable in five years to Edward D. Holten, or bearer, at the Farmers' and Millers' Bank, in the city of Milwaukee, for the sum of four thousand dollars ($4,000), and eight per cent. interest, and the other to secure a note of the same company, bearing date the 12th day of September, 1853, payable in three years to John B. Lee, or order, at
506 their office in the city of Milwaukee, for the sum of eight hundred dollarl, with ten per cent. interest, which note the said La Crosse and Milwaukee Railroad Company are liable to pay, and I have agreed upon such conveyance to me and in consideration thereof to pay:

Now, I do hereby, in consideration of this promise and of one dollar to me paid, agree to pay the said two several promis'ory notes of the Milwaukee, Fond du Lac and Green Bay Railroad Company, and to indemnify and save harmless the said La Crosse and Milwaukee Railroad Company from the payment thereof.

In witness whereof I have hereunto set my hand and seal this eighth day of September, in the year eighteen hundred and fifty-five.

(Signed) CHARLES D. NASH. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) E. G. RYAN.

507 Paper B, refer'ed to in the foregoing bond.

Articles of agreement, made this eighth day of September, in the year eighteen hundred and fifty-five, between the La Crosse and Milwaukee Railroad Company, party of the first, and C. D. Nash, party of the second part, witnesseth as follows:

1. Said party of the first part has this day sold to the said party of the second part all their estate, right, and interest in lots nine (9), ten (10), eleven (11), in block three (3), and lots one (1), two (2), and three (3), in block forty-seven (47), all in the fifth ward of the city of Milwaukee, for the price of fifteen thousand dollars.

2. The said party of the second part agree to pay therefor the sum of fifteen thousand dollars in full-paid shares of the capital stock of the said party of the first part; that is to say, one hundred and fifty shares of said stock of one hundred dollars each, fully paid to the said party of the first part upon the determination of a suit in chancery now pending in the circuit court of Milwaukee County, wherein George H. Walker is complainant, and the party of the first part is defendant.

508 3. The party of the second part agree to take charge of said suit in chancery, and to conduct the same with all due diligence to a determination at his own risk and expense.

4. Upon the determination of the said suit, if there shall be a decree therein for the defendant, the said party of the first part shall, upon

payment of the said sum of fifteen thousand dollars as aforesaid, execute and deliver to the said party of the second part a quitclaim deed of conveyance of all their right, title, and interest in the said lots of land, subject to all outstanding titles, equities, liens, and incumbrances, whether arising by grant, tax, tax sale, or otherwise.

5. Upon the determination of said suits, if there shall be a decree therein reinvesting the title to the said lots in the said complaint therein, or decreeing a reconveyance thereof by the said defendant therein, the said party of the first part shall, upon the payment of the said sum of fifteen thousand dollars as aforesaid, assign over to said party of the second part whatever money or securities the said complainant may be decreed to pay or deliver to the said defendant as a condition to such decree.

509 6. In case of a compromise or adjustment of the subject matter of the said suit between the said complainant therein and the said party of the second part, the said sum of fifteen thousand dollars shall become immediately payable in manner aforesaid.

In witness whereof the said parties have signed and sealed these presents the day and year first above written.

(Signed) STODDARD JUDD,
President of the La C. & M. R. R. Co.

(Signed) CHARLES D. NASH.

Sealed and delivered in presence of—
(Signed) P. M. JOHNSON.
S. C. JOHNSON.

STATE OF WISCONSIN,
Milwaukee County, ss:

On this eighth day of September, A. D. 1855, personally came Stoddard Judd, president of the La Crosse & Milwaukee Railroad Company, and acknowledged the foregoing deed as the deed of said company, and Charles D. Nash, both of whom are known to me as the persons who executed the foregoing deed and acknowledged the same to be his free act and deed.

P. M. JOHNSON,
Notary Public, Ozaukee Co., Wis.

510 *Exhibit No.* 4, *C. D. Nash's test'y, page* 32.—*Fr. Bloodgood, ex'm'r.*

Whereas I have this day assigned to Moses Kneeland a certain contract or agreement made the eighth day of September instant, between myself & the La Crosse & Milwaukee Railroad Company, & said Kneeland has executed to me his bond of indemnity against liability by reason of or on account of my covenants & agreements in said contract. I have this day received from said Moses Kneeland ten thousand and two hundred dollars in full paid stock; that is to say, one hundred & two shares of one hundred dollars each of stock of the La Crosse & Milwaukee Railroad Company, drawing interest since the first day of July last, & also said Kneeland's note or obligation on demand for forty-eight shares of like stock, which stock & note or obligation I hold as collateral to said Kneeland's bond to me, & which, upon maturity of my said contract with the said railroad company, I am entitled to use in discharge of my obligations in such contract contained.

Dated Milwaukee, 24th Sept., 1855.

Said bonds are No. 173, 174, 175, 177, 178, 155, 204, 156, 571, 572, 430, 157, 536.

C. D. NASH.

511 *Exhibit No. 5, L. G. Graham's test'y.—Fr. Bloodgood, ex'm'r.*

Articles of agreement, made and entered into this fifth day of July, 1855, by and between the Milwaukee and Watertown Railroad Co. of the first part and Alexander Graham, Lawrence G. Graham, and Donald D. Scott, party of the second part, witnesseth:

That the said second party, for and in consideration of the covenants, stipulations, and payments hereinafter set forth, agrees to construct in a workmanlike manner, ready for the running of the cars, a single track railway, and to furnish all the materials except the iron rails, spikes, chains, frogs, and switches, from a point about one mile west of Rock River in the city of Watertown, to and across the depot grounds, which may be selected for said railway in the village of Columbus, in the county of Columbia, together with all necessary side tracks if required to do so by said first party.

It is further mutually agreed that the said road is to be completed upon its present line, except as hereinafter provided; that is to say, the party of the first part reserves the right to make such alterations in either the line or grades as may seem to them proper, but in case the character of the work is made more expensive to perform by the
512 party of the second part, in consequence of such change, then and in that case the said second party is to be paid for such increased expense.

The first party agrees to furnish cars, engines, engineer, fireman, and fuel required for the transportation of materials, but the said second party is to furnish all the labor required to load and unload or in anywise to handle said materials, and the said second party is also to notch and in a suitable manner, prepare the iron rails ready for being laid.

In all cases the road is to be suitably drained. All timber to be used in either culverts or bridges to be either white or burr oak and of a sound and suitable quality and put into the work in a workmanlike manner.

It is also agreed that the first party is to furnish all right of way, either for said railroad or for the waggon roads required by said second party to perform said work and are also to furnish all gravel beds and convenient grounds within a reasonable distance to waste upon or to borrow earth from, and at such times as not to retard the second party in the performance of the work.

513 The plan of pile bridging to be the same as that over Third Lake near Madison, on the Milwaukee and Mississippi Railroad.

There are to be twenty-six hundred and forty cross ties to the mile placed at such intervals as the said engineer may direct; said ties are to be the best of white or burr oak, to have not less than six inches face when hewed, and to be not less than six inches in thickness, but if sawed to be six by seven inches, and all to be eight feet in length, one in nine of said ties in all cases to have not less than nine inches face which are to be used for joint ties. When said ties are laid they are to be taken out of wind so that the chairs and rails may lie true and even upon them, and when laid on full ballast grade, shall be firmly embedded, and when on subgrade, shall be laid so as to make a true and even surface.

In all cases in which the ballast shall be hauled on with cars, the

track when raised to the proper heighth, shall be left true and even and the material well rammed under the ties on which the iron rests.

It is mutually agreed that the party of the first part is to furnish the party of the second part at such times as required, sufficient mo-
514 tive power, gravel, platform cars, for ballasting & superstruction of said road, first party also to furnish an engineer, fireman, & fuel to run said motive power free of all charges to the second party.

The whole work to be done under the the directions of the company's chief engineer.

The work shall be staked out in such time as to cause no hindrance to the workmen.

It is mutually agreed that when the party of the second part shall have completed the road from Watertown to Columbus, in their opinion, they shall give notice to the party of the first part, or their engineer, and if the party of the first part shall fail to approve or disapprove of said road within ten days after said notice shall have been given, the work shall be considered accepted and finished, and a final estimate shall be made, & any balance due on said final estimate shall be paid to the party of the second part; and if said party of the first part shall not accept the work as above, notice of such non-accceptance shall be
515 immediately given to said party of the second part, and in that case such work shall be arbitrated and settled as hereinafter provided as in relation to other matters of difference.

It is further agreed by the parties that should any item of work upon the line of road between Watertown and Columbus exceed the amount estimated in the schedule of E. H. Brodhead, chief engineer, of date of July 5th, 1855, hereunto attached and made a part of this contract, the parties of the second part are to be paid therefor an additional sum at the same price that similar work is estimated in said schedule. Should there be any rock it is to be paid for at a fair price in addition to the stipulated price per mile. If the party of the first part should fail to pay any estimate when due according to this contract, they shall pay interest on all such deferred payments at the rate of 10% per annum until paid, but this shall not be so construed as to allow said company the right to withhold the payment of any estimate upon this contract. It is further understood that the rail to be laid is the common T-rail.

The work is to be commenced immediately and completed in running order by the 1st day of August, 1856, or sooner, if the party of
516 the second part may so elect; but if the party of the first part fail to make payments and not provide the means to enable said second party to carry on said work so as to complete it within the time above named, then the time of completion is to be extended in proportion to the time of delinquency of payments.

ESTIMATES AND PAYMENTS.

Estimates to be made monthly by the engineer of said railroad co. of the amounts of work done each month, and copies thereof furnished to said party of the second part for all work done and material furnished for the use of said road; and payments thereon are to be made at the rate of 85 per cent. monthly to the party of the second part, by said party of the first part, as follows: Forty per cent. in Milwaukee City bonds at 80 cents on the dollar; twenty per cent. in town bonds of the county of Columbia at 80 cents on the dollar, and 25 per cent. in cash. Estimates are to be made and returned on the 30th day of each month, and payments to be made on the 5th day of each month following of the

fair value of work done and material delivered in proportion to
517 what at the time remains to be performed, and the party of the first part is to furnish the party of the second part with a certificate of the above estimates.

For each and every mile of single track and side tracks so completed the party of the first part agrees to pay to the party of the second part, their heirs, or legal representatives, the sum of nine thousand dollars in the manner following, that is to say, twenty-five thousand dollars in the stock of said company at its par value; forty thousand dollars in town bonds of the county of Columbia, at 80 cents on the dollar; forty thousand dollars in cash, and the balance in the bonds of the city of Milwaukee at 80 cents on the dollar.

All matters of difference as to the construction of this contract or as to the value of any work done not herein provided for is to be left to the decision of the chief engineer in charge of said road, but the party of the second part reserves the right to appeal from the decision of such engineer, and to select a competent engineer to decide with the company's engineer, and if they both cannot agree they shall select a
518 3d engineer, and the decision of them or any two of them shall be final and binding on the parties hereunto subscribed.

EDWARD H. BRODHEAD, [L. S.
For M. & W. R. R. Co.
[L. S.]
[L. S.]
[L. S.]

The party of the first part also agrees that the men employed and materials necessarily used in building the road may pass free over the road between Milwaukee and Columbus while in process of construction.

E. H. BRODHEAD,
For M. & W. R. R. Co.
ALEXANDER GRAHAM,
By DONALD D. SCOTT.
LAWRENCE G. GRAHAM,
By DONALD D. SCOTT.
DONALD D. SCOTT.

519 SCHEDULE.

80,000 cubic yards of ballasting.
400,000 " " earthwork.
22,000 " feet timber for culverts & bridges.
52,000 feet B. M. oak plank.
100 cubic yards masonry.
120 acres of clearing.
Grubbing to be done of sufficient width for the grading.
1,000 lineal feet of trestle work.
2,640 cross-ties to the mile.

This to be burr or white-oak; to have six inches face, and to be six inches in thickness if hewed; but if sawed to be six by seven inches, and to be eight feet in length; one in nine to have nine inches face, which are to be used for joint ties.

Ballasting to be eighteen inches in depth; road-bed to be twelve feet wide on top when finished, and to have slope of one foot base to one foot rise.

At sub-grade the width to be sixteen and one-half feet.

Grubbing to be performed the full width of the grading, and in all cases, except where the filling is two and one-half feet above the top of the stumps.

Clearing to be made the full width of the right of way.

July 5, '55.

EDWARD H. BRODHEAD,
Chief Engineer M. & W. R. R. Co.

(Indorsed:) Contract, July 5, 1855, between M. and W. R. R. Co., and Graham and Scott. Compl'ts Exhibit, May 21, 1872. Graham, page 33.

520 *Exhibit No. 6, L. G. Graham's test'y, page 241.—Fr. Bloodgood, ex'm'r.*

This indenture, made this 7 day of December, A. D. 1859, by & between Selah Chamberlain and James B. Cross, party of the first part, and Lawrence G. Graham and Donald D. Scott, party of the second part, witnesseth:

That whereas said Chamberlain recovered a judgment in the district court of the United States for the district of Wisconsin, on the 2d day of October, A. D. 1857, against the La Crosse & Milwaukee Railroad Company, for over six hundred thousand dollars, and whereas said Cross now holds & owns by assignment a certain judgment recovered in said court against said company by Newcomb Cleveland the 7th day of October, A. D. 1857, for over one hundred thousand dollars; and, whereas, said parties of the second part own and have two judgments against said company recovered by them in the circuit court of Milwaukee County; one recovered November 25, 1858, for 29,804 dollars & 57 cents damages, & 16 dollars & 14 cents costs; the other recovered September 21, 1858, for 11,170 dollars damages, & 18 dollars & 15 cents costs.

Now, therefore, in consideration of one dollar paid by the party of the second part to each of the party of the first part, the receipt
521 whereof is hereby acknowledged, the party of the first part has, & hereby does, and each of said party of the first part has, and hereby does release to said party of the second part, all priority of lien of said judgments, or either of them, owned by said party of the first part, in what manner soever acquired, over the lien acquired, or to be acquired at law or in equity, under or upon either of said last named judgments owned by said party of the second part in, to, or upon the following-described real estate in the city & county of Milwaukee, in the State of Wisconsin, viz:

Lots 9, 10 & 11, in block 3; lots 1, 2 & 3, in block 47, in the 5th ward of said city; lots 1 & 4 in block 156; lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, in block 155; one-third of block 157, except lot 8, and the bayou adjoining said lot 157; one-third of lots 809; all of lots 10, 12, 13, 14, & one-third of lots 16 & 17, & east half lot 15, in block 158, in the 4th ward of said city; and the party of the first part hereby releases to said party of the second part all right or claim of the parties of the first part or either of them to claim any application of any fund arising from any sale of said real estate, or any part thereof, in payment of either of said judgments owned by said parties of the first part, until after full payment of both said judgments
522 owned by said party of the second part, the object, true intent, & meaning, & effect of this instrument being to postpone both

the judgments owned by the parties of the first part respectively, to the judgments owned by said party of the second part, so far as regards lien upon or payment out of said real estate above described.

And the party of the second part may commence suit, if they shall so desire, and obtain a judgment against said company on said judgments of the party of the second part, in the district court of the United States for the district of Wisconsin, & in such case the judgment so obtained by said party of the second part against said La Crosse & Milwaukee Company shall have like preference in payment out of said land, or the avails of any sale thereof that is hereinbefore covenanted.

In witness whereof, the party of the first part have hereto set their respective seals and signed their respective names this 7th day of December, A. D. 1859. (Provision about suing over said Graham & Scott judgments interlined before signing.)

In presence of—
CHARLES A. HAMILTON.
H. J. EMMONS.

S. CHAMBERLAIN. [SEAL]
523 J. B. CROSS. [SEAL.]

STATE OF WISCONSIN,
Milwaukee County, ss :

CITY OF MILWAUKEE, *December 7th*, 1859.

Selah Chamberlain and James B. Cross this day personally appeared before me, and each for himself acknowledged that the foregoing instrument, by them signed & sealed, was his free act & deed for the uses & purposes therein named the day & year last above written.

CHARLES A. HAMILTON,
Notary Public State of Wis., resi ing in Milwaukee Co.

524 (Indorsed) Quit claim. Selah Chamberlain to Lawrence G. Graham & Donald D. Scott.

Received for record June 6th, 1860, at 4 o'clock p. m., and recorded in vol. 69 of deeds, on pages 11, 12, & 13.

SAMUEL WAEGLE,
Register Mil. Co., Wis.,
By FRED. SCHLOEMILCH, *Deputy*

M'ch 13, '73. Graham's dep., compl'ts' test'y.

525 *Exhibit No. 7, L. G. Graham's test'y, page 246.—Fr. Bloodgood, ex'm'r.*

The following is the amount and value of work done and materials furnished to date under the original contract of Graham & Scott from sec. No. 34 to section No. 52 inc.:

Final estimate.

Quantities.	Items of work.	Price.	Amounts. Doll's.	Cts.	Totals. Doll's.	Cts.
$19\frac{635}{1000}$	Miles road completed under contract	$90 00	171, 882	00		
	Deduct the following work still to be done:					
4, 925	C. Y. excavation, @ 30c 1, 477 50					
67, 530	" ballast, @ 20c 13, 506 00		14, 983	50		
					156, 898	50
	Add the following extra items:					
1, 347	C. Y. solid rock	$1 00	1, 347	00		
3, 185	" loose "	50c	1, 592	50		
18, 236	" indurated earth	45c	8, 206	20		
2, 401	Ties	25c	600	25		
60	Lin. ft. Braer bridge	$20	1, 200	00		
201	C. Y. concrete masonry	$6	1, 206	00		
$1\frac{8}{10}$	" quicklime "	$5	9	00		
48	" dry "	$4	192	00		
	Moving culvert & houses & protection for spring		89	00		
	Timber for tank house at Lowel, & hauling lumber Columbus		244	00		
					14, 685	95
	Total estimate				171, 584	45
	Previous " (1st March, '57)				126, 464	00
	Present "				45, 120	45

526 Eng. office L. C. & M. R. R., Wat. Div., Watertown, this 6th June, 57.

The above is correct.

J. R. RUST,
Dist. Eng.

The following is the amount & value of work done and materials furnished to date under the supplementary contract of Graham & Scott on Mud Lake pile bridge and on sec. No. 33 (1st sec. west of Rock River bridge, at Watertown), all of which is to be considered as extra work, and paid for in cash.

Final estimate.

Quantities.	Items of work.	Price.	Amount. Doll's.	Cts.	Totals. Doll's.	Cts.
	Mud Lake pile bridge.					
5,691	Lin. ft. pile bridge (finished)	$4	22,764	00		
412	Extra piles, del'd (oak, elm, &c.)	$5	2,060	00		
1,623	" " " (basswood)	$3	4,869	00		
2,035	" " driven	$3	6,105	00		
6,883	Lin. ft. timber, del'd & laid, extra	35c	2,409	05		
			38,207	05		
	Deduct 100 lin. ft. bridge provided for in contract & concluded in est. at	$4	400	00		
					37,807	05
	Section No. 33.					
	All finished.					
	Their contract price is				6,750	00
	Total estimate				44,557	05
	Previous " (1st March, '57)				39,500	25
	Present "				5,056	80

527 Eng. office L. C. & M. R., Wat. Div., Watertown, this 6th June, '57.

The above is correct.

J. R. RUST,
Dist. Eng.

(Indorsed:) March 13, 1873. X't compl't. Graham's dep.

528 *Exhibit No. 8, L. G. Graham's test'y, page 259.—Fr. Bloodgood ex'm'r.*

U. S. circuit court, eastern district of Wisconsin.

L. G. GRAHAM ET AL.
vs.
LA CROSSE AND MILWAUKEE R. R. COMPANY ET AL.

It is hereby stipulated by and between the parties appearing herein that on the first day of May, 1862, and prior thereto, an action in equity was pending in the district court of the United States for the district of Wisconsin, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp were complainants, and The La Crosse and Milwaukee Railroad Company and others were defendants; that said suit continued pending in said court till January 13th, 1862, when a final decree was rendered in favor of the complainants therein and against the defendants.

Dated Milwaukee, Aug. 2d, 1873.

N. S. MURPHEY,
Compl'ts' Sol.
JOHN ST. CARY,
Sol'r for M. St. P. R'y Co.
E. MARINER,
Sol'r for Jas. Ludington.

529 *Exhibit No. 9, L. G. Graham's tes'y, page 246.—Fr. Bloodgood, ex'm'r.*

Petition—Graham and Scott.

In the district court of the United States for the district of Wisconsin.
In equity.

GREENS C. BRONSON, JAMES G. SOUTTER, and Shepherd Knapp, trustees, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILroad Company and others, defendants.

To the Hon. A. G. Miller, judge of said court:

Your petitioners, Lawrence G. Graham and Donald D. Scott, two of the defendants in the above entitled cause, respectfully show unto your honor that the said defendant, The La Crosse and Milwaukee Railroad Company, being largely indebted to your petitioners, on the 1st day of October, A. D. 1857, for value received, duly executed and delivered to your petitioners its three certain promissory notes in writing, bearing date on the said 1st day of October, A. D. 1857, No. 463, for ten thousand dollars; No. 465, for nine thousand seven hundred and sixty-seven dollars and sixteen cents; and No. 464, for ten thousand dollarss; that after said notes became due and payable and remaining unpaid, your petitioners commenced an action thereon in the circuit court for the county of Milwaukee, in the State of Wisconsin, against
530 the said defendants, the said La Crosse and Milwaukee Railroad; and that such proceedings were thereupon had, that afterwards, and on the 25th day of November, A. D. 1858, in said circuit court, before the judge thereof, your petitioners recovered judgment against the said La Crosse and Milwaukee Railroad Company for the sum of twenty-nine thousand eight hundred and twenty dollars and seventy-one cents, damages and costs.

Your petitioners further show that the La Crosse and Milwaukee Railroad Company, being further indebted to your petitioners, on the 1st day of October, A. D. 1857, for value received, duly executed and delivered to your petitioners its certain other promissory note in writing, bearing date on said 1st day of October, A. D. 1857, No. 462, for ten thousand dollars, and that after said note became due and payable, and remaining unpaid, your petitioners commenced a suit thereon in the said circuit court against the said La Crosse and Milwaukee Railroad Company, and that such proceedings were thereupon had, that afterwards, and on the 21st day of September, A. D. 1858, in said circuit court, before the judge thereof, your petitioners recovered judgment thereon against said railroad company for the sum of eleven thousand one hundred and eighty-eight dollars and fifteen cents, damages and costs.

531 That afterwards, in December, A. D. 1857, the said judgments remaining entirely unpaid and unsatisfied and unreversed, to the amount of forty-one thousand and eight dollars and eighty-six cents, your petitioners commenced an action thereon in this the district court of the United States for the district of Wisconsin, against the said La Crosse and Milwaukee Railroad Company, and caused said company to be duly served with process therein; and that such proceedings were thereupon had, that on the 11th day of January, A. D. 1860, in the said district court before the judge thereof, these defendants recovered a

judgment against the said La Crosse and Milwaukee Railroad Company for the sum of forty-four thousand four hundred and thirteen dollars and eighteen cents, damages and costs, which judgment, duly entered, enrolled, and docketed in said court on that day, still remains unpaid, unreversed, and unsatisfied, as by the records of said court, reference being thereto had, will more fully appear; and that the whole amount of said last named judgment, together with the interest thereon, since the date of the docketing of said judgment.

Your petitioners further represent that they are advised and believe, and therefore claim that said judgment constitutes an equitable lien upon all the real estate, buildings, fixtures, rolling-stock, and
532 other property of said defendant railroad company recognized in law as real estate, subject only to the prior lien of bona fide and lawful mortgages and judgments as are prior in date to his said judgment, and is entitled to be paid out of the same property or out of the net proceeds arising from the use and operation thereof whenever such prior and bona fide and lawful liens shall have been satisfied.

And your petitioners further represent that by an act of Congress, entitled "An act granting a portion of the public lands to the State of Wisconsin to aid in the construction of railroads," approved June 3d, 1856, and by an act of the legislature of the State of Wisconsin, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, &c.," approved October 11th, 1856, the said defendant railroad company became contingently entitled to have and receive from the general government, through the State of Wisconsin, as its trustee, a conveyance of lands to the amount of about one million of acres, which lands, at the time of the execution of the mortgage or trust deed, for the foreclosure of which the above entitled action is brought, were estimated by said railroad company to be of the value of seventeen millions of dollars; that by said act of the legislature of the State of Wisconsin it was provided that the title to said lands shall vest in the La Crosse and
533 Milwaukee Railroad Company in the manner following, that is to say: Whenever twenty continuous miles of said road shall have been completed so as to admit of the running of regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid; then the title to two hundred and forty sections of said land shall vest in the said La Crosse and Milwaukee Railroad Company; and when a second twenty continuous miles of said road shall have been completed so as to admit of running regular trains on the same, the governor shall certify as above; and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company, and so from time to time until said roads are completed.

And it shall be the duty of the governor so to certify to the Secretary of the Interior whenever any such twenty miles are completed, so as to admit of running of regular trains of cars over the same; and the governor of the State shall, in his official capacity and in behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this chapter be entitled to any of said land, a deed
534 in fee-simple of any and all the lands to which said company shall be entitled; provided that said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit the running regular trains over the same, and so on from time to time, so that the sale by said company shall never exceed six sections of land for every mile of said road so completed. And that in and by

said act it was further provided that "the location and designation of the route and line of the said roads shall be made by the La Crosse and Milwaukee Railroad Company; and the same shall, from time to time, and as fast as practicable, be reported to the governor of this State." The selection of lands provided for in the act of Congress herein mentioned shall be made by such agents as may be approved by the governor of this State.

Your petitioners further represent, upon information and belief, that soon after the passage of said act the line of said company's railroad was duly located and designated from the city of Madison to Portage City, and from Portage City towards St. Croix River or lake, a distance of over one hundred miles in all, and the same was put under contract, and the same was duly reported to the governor of the State; and that during the years 1857 and 1858 over sixty continuous miles of said railroad were completed so as to admit of running regular trains over
535 the same from Portage City westward; and the fact was duly reported by said company to the governor of this State, and the said company thereupon and thereby became entitled to have such fact certified by the governor of the State to the Secretary of the Interior of the United States, in pursuance of said act, and to have the title to four hundred and eighty sections of said granted lands vest in the said La Crosse and Milwaukee Railroad Company and to have a conveyance of the same.

But your petitioners are informed and believe that the said La Crosse and Milwaukee Railroad Company has hitherto neglected or failed to procure from the governor of the State the requisite certificate or certificates to the Secretary of the Interior, to cause or procure the title to any of the said lands to vest in said company, under the provisions of said acts, and in consequence thereof the said company has not yet acquired, as it might and ought to have done, the title to any part or parcel of said lands. And your petitioners are advised and believe that by reason of the facts aforesaid the said railroad company and the said complainants, as trustees or mortgagees, under the mortgage sought to be foreclosed in said action, have not acquired or perfected any
536 right or title to any of said lands which this court is competent by its decree to convey to any purchaser, or of which it can give any purchaser possession under its decree in the said action; and that, therefore, any sale which may be made or attempted to be made under the said decree, without further action of this court or of the said complainants, to secure the title of said lands to vest in said company, under the said acts, will be absolutely valueless to the purchaser and wholly unproductive to the complainants.

But your petitioners are advised and believe that such sale, if made under the provisions of said trust-deed or mortgage, and the decree of this court will cut off and extinguish all the equitable claims, rights, and interest of the said La Crosse and Milwaukee Railroad Company and of your petitioners, and all other creditors thereof whose liens are subsequent to the lien of said trust-deed or mortgage, in and to all the lands so as aforesaid granted to the La Crosse and Milwaukee Railroad Company.

Your petitioners further represent, upon information and belief, that by the proper proceedings on the part of this court and of the said complainant's trustee, the title to four hundred and eighty sections of the said granted lands may be caused and procured to vest in the said
537 La Crosse and Milwaukee Railroad Company, and to inure to the benefit of the said trustees under their said trust-deed or

mortgage, and that the same thus being made capable of being sold in distinct lots and parcels, will bring a very large sum of money, and, as your petitioner believes, as much as eight hundred thousand dollars.

Your petitioners insist that inasmuch as it is provided in and by the said act of legislature of the State of Wisconsin, "that said land shall be exclusively applied in the construction of that road for which it was granted and situated, and shall be disposed of only as the work progresses," and, "that said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains on the same, and so on from time to time, so that the sale of land by said company shall never exceed six sections of land for every mile of said road so completed," it was not the policy of the legislature or the intention of said trust-deed or mortgage, of which said act formed a part, to authorize the sale of any part of said lands until the title of the company thereto should be perfected in conformity to said act, and much less was it the policy or design of the legislature to authorize said company by the instrumentality of a mortgage to
538 extinguish its entire right and claim to the said granted lands, without completing a single mile of said road or acquiring title to a single section of said lands.

Your petitioners further represent, that they are informed and believe that the track and line of the said railroad and the real estate and the rolling-stock conveyed by said trust-deed or mortgage are wholly inadequate, without including said granted lands, to pay the principal sum and interest secured or intended to be secured thereby; that said granted lands are a collateral security, available to the complainants in said action, but not available to any other creditors of said railroad company, and that by the terms of said trust deed as well as by the general principles of equity the said complainants are bound to resort, first, to said collateral security for the payment of said mortgage debt and to make the same productive and available as far as practi'ble before resorting to the principal security upon which the other creditors of the company must rely solely for the payment of their claims.

Your petitioners further represent, that under and by virtne of the decree made and entered in the said action on the 16th day of January, 1862, the marshall of the United States for the district of Wisconsin has advertised for sale at public auction at the post-office, in
539 the city and county of Milwaukee, all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of the aforesaid act of Congress approved June 3, 1856, and under or by virtue of the aforesaid act of legislature of the State of Wisconsin approved October 11, 1856, together with the track or line of said company's railroad, extending from Portage City to the city of La Crosse, and all the fixtures, real estate, and rolling-stock belonging or appurtenant to said track or line, and conveyed or intended to be conveyed by said trust-deed or mortgage, the lands mentioned as granted by the United States to be sold first, which sale your petitioners are informed and believe the said complainants and the said marshall intend to make or cause to be made at the said time and place; unless restrained by the order of this court, they believe and fear said sale will then and there be made.

Your petitioners further represent that, as they are advised and verily believe, the said sale or pretended sale of the lands as aforesaid granted in and by the aforesaid acts will not produce any more than the bids of a merely nominal sum, and will not be available to the purchaser, if one is found, for any practicable or valuable purpose, but that it will effect

in form, at least, a legal and absolute transfer and extinguish-
540 ment of all the right and claim of the said La Crosse and Milwaukee Railroad Company in and to the whole of said granted lands under the acts aforesaid, and will cause an irreparable injury to the creditors of said company, including your petitioners, and also to the stockholders and all persons interested in the appropriation of said lands to the construction of the railroads designated and authorized by the aforesaid acts, and will lead to innumerable and vexatious suits, and interminable litigation in regard to the title, control, and future disposition of said granted lands.

Your petitioners, therefore, pray that an order may be made staying or postponing the said contemplated sale until the title to such portions of said lands as the said company equitably ought to have conveyed to it by reason of its having completed sixty or more continuous miles of its road shall have been procured from the State and made available to the said complainants, or that your petitioners may have such other and such further relief in the premises as may be just and equitable.

MATT. H. CARPENTER,
Sol. for Petitioners.

541 DISTRICT OF WISCONSIN, *ss:*

Lawrence G. Graham, being first duly sworn, on oath says that he is the Graham mentioned in the foregoing petition; that he has read said petition and knows its contents, and that he verily believes the same to be true.

LAWRENCE G. GRAHAM.

Subscribed and sworn to before me this 21st day of April, A. D. 1862.

J. M. MILLER,
Clerk U. S. D. C. Wis.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district, this seventeenth day of March, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the said United States the ninety-seventh.

[L. S.] EDWARD KURTZ, *Clerk.*

(Indorsed:) U. S. circuit court, east'n district Wis. Greene C. Bronson & James T. Soulter & Shepherd Knapp vs. The La Crosse and Milwaukee Railroad Company et al. Certified copy petition of Graham & Scott. Filed May 8th, 1862. Aug. 2, '72.

542 *Exhibit N.* 10.—*L. G. Graham's test'y, page* 264.—*Fr. Bloodgood, ex'm'r.*

Petition of Graham & Scott, Helfenstein, Milwaukee and Minnesota Railroad, and Chas. Howard, asking postponement of sale.

District court of the United States for the district of Wisconsin.

GREEN C. BRONSON, SHEPHERD KNAPP, AND James T. Soulter, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, The Milwaukee and Minnesota Railroad Company, J. Albert Helfenstein, Lawrence G. Graham, Donald D. Scott, Charles Howard, assignee of Sebre Howard, and others. } In chancery.

To the Hon. Andrew G. Miller, judge, &c.:

The petition of Lawrence G. Graham, J. Albert Helfenstein, Donald D. Scott, The Milwaukee and Minnesota Railroad Company, and Charles Howard, assignee of Sebre Howard, respectfully represents that they are each and all defendants in the above entitled cause, and that their respective interests appear from the records and papers herein. That the sale under the decree heretofore rendered in this cause was,
543 as your petitioners are informed and believe, originally advertised to take place on the 22d day of May, 1862, and on that day postponed to the 28th day of July, A. D. 1862, and on the last named day further postponed until the 2d day of October, A. D. 1862, on which latter day, your petitioners are informed and believe, the complainants intend to have such sale made, pursuant to said decree.

And your petitioners further represent that, as appears from the records and papers in this cause, there are many distinct and different interests involved in the subject-matter of this suit, and in the property and franchises affected thereby, and that the same now exceed upwards of four millions of dollars in amount, but that no one interest, as your petitioners are informed and believe, exceeds the sum of about two million dollars in amount.

And your petitioners further represent that, by the terms of the said decree, the bonds secured by the mortgage described in the bill of complaint in this cause are to be received in part payment of the proceeds of such sale in lieu of money; that the situation of the country in respect to financial resources is such that it is not all probable, and
544 indeed it may be said to be absolutely certain, that at such sale, if the same shall take place on the 2d day of October aforesaid, there will be present no bidder or bidders whatever who will be prepared to bid or who will bid any considerable sum of money, or any sum whatever, in fact, of money, bonds, or other thing, which will even approximate to the amount decreed to be due upon the mortgage which this suit is brought to foreclose, including the amounts due to your petitioners, and for which they have liens upon said mortgaged property.

And these petitioners further represent that, in case of a sale of said mortgaged premises on the 2d day of October next, there will be no persons whatever present thereat, as they are informed and believe, except the parties interested therein, and that, in the present state of the country, there will be no bids made at such sale except by the hold-

ers of the first 1991 bonds, and that any bid by them made will be made in said bonds, and not in money.

And your petitioners verily believe that it is not expected or contemplated that any bids will be made at such sale except in said bonds; that in case such sale shall take place, it will be necessary for all
545 the junior encumbrancers of said property to submit to an entire sacrifice of their interests in said mortgaged property, and suffer the same to be sold for the amount in bonds of the first (decreed) encumbrance thereon; that it will be impossible for your petitioners and the other junior encumbrancers of said property to prevent such sacrifice, for the reason that in the present disordered condition of financial matters in the country, it will be impossible for them to raise and bid the amount in money necessary to pay off the adjudged prior liens upon said property. And your petitioners further represent that in actual cost and value the said mortgaged premises far exceed the amount of the first liens thereon, as decreed by the court; that in case of a sale for even the full amount of said first liens thereon, will be a total and ruinous sacrifice of the interests of your petitioners.

And your petitioners further represent that said mortgaged property is so large in value, and of so peculiar a nature in itself, that in justice and equity, and having a due regard to the interests of all parties concerned, no forced sale against the wishes of any of such interested parties ought to be made, or allowed to be made, by the court, for
546 the reason, among others, that such forced sale must necessarily result in the total destruction of some one, at least, and probably more, of the interests therein involved, or in forcing the holders of later liens to raise and bid in money at such sale a sum which in these times may almost be termed fabulous. And your petitioners further represent that, after a diligent inquiry, they have been unable to learn of any instance where any forced sale has been made of any railroad and its franchises in this country, or where any such sale at all has been made, except by an arrangement between the different parties having liens thereon, and that such arrangements have always been made with a view to a reorganization of a new corporation, in which the interests of all parties should be protected.

And your petitioners verily believe that there has been no foreclosure sale in this country of any railroad and its franchises where the property has been put up at auction for cash, or where there has been any opposition thereto by the lien-holders interested therein, or where there has in fact been any cash bid by or required from the purchaser at such sale.

And your petitioners believe that such fact has arisen solely from the peculiar nature of railroad property and franchises, and from the
547 immense values involved therein.

Your petitioners are further informed and believe that in the case of the New York and Erie Railway, having upwards of four hundred miles of track, and upon which were five distinct mortgages, amounting, with the capital stock thereof, to upwards of thirty-six millions of dollars, the property of said company was allowed to be sold only upon an arrangement being made by which the stock and all the liens thereon should be fully protected; that in the case of the Wabash Valley Railroad, having upward of two hundred miles of track, the property of said company was sold under a similar arrangement; that the same is true in regard to the Pittsburg, Fort Wayne and Chicago Railroad Company, having upwards of four hundred miles of track; the Ohio and Mississippi Railroad Company, having upwards of three hun-

dred miles of track; the St. Louis, Alton and Chicago Railway Company, having some two hundred and forty miles of track; the Chicago and Northwestern Railway Company, the Covington and Lexington Railroad, and others which your petitioners could mention.

And your petitioners further represent that the same facts are true with reference to railroad foreclosures that have taken place in
548 this State, namely, upon the Milwaukee and Mississippi, the Racine and Mississippi, and the Mineral Point Railroads; and your petitioners are informed and believe that even the rendering of a decree in the case now pending in this court to foreclose the first mortgage upon the Milwaukee and Horicon Railroad has been from time to time resisted and deferred in order to enable the different lien-holders to accommodate and arrange their interests amicably.

Your petitioners further represent that there are grave doubts existing in regard to the regularity of the advertisement of sale in this cause, and particularly so in regard to the adjournment of said sale from the 28th day of July, A. D. 1862, to said 2d day of October; that your petitioners are advised that by reason of the recent act of Congress, constituting among other things the State of Wisconsin a part of the eighth judicial circuit of the United States, said adjournment on said 28th day of July being in the nature of a judicial act in law emanating directly from the court, and one which the court had then no jurisdiction to perform, the same is therefore void, and that a sale pursuant to such adjournment will be void, and will convey no title to the purchaser. And your petitioners further represent that they are advised that
549 even if a valid sale of said property can be made on said 2d day of October, it is questionable whether there can be any confirmation thereof until the January term, A. D. 1863, of this court; and your petitioners believe that prior to that time some arrangement of the different interests represented in this suit can be made.

Your petitioners further represent that they believe that the interest of no one of the parties having liens upon said property will or can be seriously impaired or prejudiced by the postponement of such sale for three months at least, but rather that the interests of all parties will be forwarded and protected by such postponement. Your petitioners further represent that there has already been great and expensive litigation among the various parties interested in said mortgaged premises, and they believe while a sale on the 2d day of October next will tend to prolong the present and excite greatly future litigation, an adjournment of such sale with a view to the accom'odation of all interests involved would save much contest and expense in the future, and tend greatly, if not entirely, to the preservation and protection of all such interests.

Your petitioners further represent that appeals have been taken to the Supreme Court of the United States from the decree herein,
550 and they believe that the same will be duly presented, unless some arrangement of the different liens is made; that a sale of said property on the 2d day of October, A. D. 1862, will prevent such an arrangement from being made and will in itself necessitate an energetic prosecution of such appeals, and, as your petitioners verily believe, will greatly complicate the whole present litigation.

Your petitioners further represent that they are now and have always been willing to make a fair and reasonable adjustment of their interests with the other parties having liens upon said property, and they therefore pray that an order may be made directing a postponement of said

sale until some time after the first Monday of January, A. D. 1863. And they will ever pray, &c.

J. ALBERT HELFENSTEIN,
By BUTLER, BUTTRICK, & COTRELL, AND
PALMER, AND STARK, *His Sol'rs.*
MATT. H. CARPENTER,
For the Milwaukee and Minnesota Railroad Company.
LAURENCE G. GRAHAM.
DONALD D. SCOTT.
LEVI HUBBELL, *For Howard,*
By CARPENTER, *Of Counsel, their Solicitor.*

551 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

Moses Kneeland, being duly sworn, says that he is the president of the defendant The Milwaukee and Minnesota Railroad Company; that he has heard the foregoing petition read and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

MOSES KNEELAND.

Sworn and subscribed to this 24th day of September, 1862, before me.
J. P. C. COTRELL,
U. S. Commissioner, Wisconsin.

Which petition is endorsed as follows, to wit:

Sept. 24, 1862, this petition is not entertained.
A. G. MILLER,
Judge.

(Indorsed:) U. S. district court, Wisconsin. Greene and Bronson et al. vs. La Crosse and Milwaukee Railroad Company et al. Certified copy petition of J. Albert Helfenstein et al. Filed Sept. 24, 1862. Aug. 2, '73.

552 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district, this seventeenth day of March, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the said United States the ninety-seventh.

[L. S.] EDWARD KURTZ, *Clerk.*

(Indorsed:) U. S. dist. court, Wisconsin. Greene C. Bronson et al. vs. La Crosse & Milwaukee Railroad Company et al. Certified copy petition of J. Albert Helfenstein et al. Filed Sept. 24, 1862. Aug. 2, '73.

553 *Exhibit No.* 11, *L. G. Graham's test'y, page* 265.—*Fr. Bloodgood, ex'm'r.*

Petition of Mil. & St. Paul Railway Co. for possession of whole road, and order of court May 7, 1863, for joint occupancy.

United States district court for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOULTER, AND Shepherd Knapp, trustees, *vs.* LA CROSSE AND MILWAUKEE RAILROAD COMpany et al.	In equity.

To the Hon. Andrew G. Miller, district judge:

Your petitioner The Milwaukee and St. Paul Railway Company respectfully show that it is a corporation duly organized by William Wallace Pratt and William H. White, the purchasers of the La Crosse and Milwaukee Railroad and its appurtenances, at the marshal's sale under the decree of this court in this cause, by virtue and in pursuance of chapter seventy-nine of the revised statutes of the State of Wisconsin concerning railroads.

That, in pursuance of said sale and the confirmation thereof by this honorable court, Darius C. Jackson, the said marshall of the
554 United States for the district of Wisconsin, on the fifth day of May instant, executed and delivered to said William Wallace Pratt and said William H. White a deed of said mortgaged premises.

That immediately thereafter said purchasers, William Wallace Pratt and William H. White, organized your petitioner as a corporation, under and by virtue of the provisions of said chapter seventy-nine of the revised statutes of Wisconsin concerning railroads, and on the said fifth day of May instant filed their articles of association in the office of the secretary of state of the State of Wisconsin, a certified copy of which said articles of association are herewith shown to this court, and to which your petitioner prays leave to refer.

That afterwards, and on the sixth day of May instant, the said William Wallace Pratt and William H. White, under their hands and seals, executed and delivered to your petitioner, in due form of law, a deed of all and singular the said mortgaged premises aforesaid, conveyed to them by the said Darius C. Jackson, marshall as aforesaid, which said deed is herewith shown to this honorable court, and to which for greater certainty your petitioner prays leave to refer.

555 And your petitioner further shows that Hans Crocker was appointed the receiver in this suit of said mortgaged property, and took possession thereof on the 11th day of June, in the year 1860; and your petitioner shows that the purposes for which he was appointed have been answered and the duties of his office (save accounting and being discharged) are at an end, in consequence of a sale of the said mortgaged premises under the decree in this suit.

Your petitioner further shows that said Hans Crocker, receiver of said mortgaged premises, is also the receiver of the eastern division of said La Crosse and Milwaukee Railroad, to wit, from the city of Milwaukee to Portage City, appointed under certain judgment creditors' bill filed against said La Crosse and Milwaukee Railroad Company, and also against the Milwaukee and Minnesota Railroad Company, and also in the foreclosure suit of Bronson and Soulter against said La Crosse

and Milwaukee Railroad Company and others; that, as your petitioner is informed and believes, the mortgage of the franchise of the said La Crosse and Milwaukee Railroad Company to the said complainants, described in the bill of complaint in this cause, is a mortgage of the
556 entire franchise, to use, operate, manage, and control said La Crosse and Milwaukee Railroad for its entire length, from the city of Milwaukee to the city of La Crosse, and that the said mortgage is prior and superior to all the liens, claims, and incumbrances on said eastern division, by virtue of which said Hans Crocker, as such receiver, now holds and operates such eastern division of said road; that by the foreclosure of the complainant's said mortgage in this case, the sale and confirmation under said decree, the conveyance of the marshall to said William Wallace Pratt and William H. White, the purchasers at said sale, the organization of your petitioner by said purchasers, under and by virtue of the provisions of chapter seventy-nine of the revised statutes of Wisconsin concerning railroads, and the conveyances by said purchasers to your petitioner of all and singular the said mortgaged premises,

Your petitioner has succeeded to all the rights, privileges, franchises, and immunities of the original La Crosse and Milwaukee Railroad Company, in running, operating, and controlling said railroad in its entire length, from the city of Milwaukee to the city of La Crosse, and that such rights so to run, operate, manage, and control the same is prior and superior to the rights of any of the defendants in this cause, & prior & superior to the right of the mortgagees in the mortgage to said Greene C. Bronson and James T. Soulter on the eastern division, under
557 which said Hans Crocker is acting as receiver, inasmuch as the said mortgage to the said complainants is prior in date and lien to the mortgage to the said Greene C. Bronson and James T. Soulter.

And your petitioner is informed and believes that it is entitled, in virtue of the premises, to the possession, control, and management of the entire line of said railroad, from the city of Milwaukee to the city of La Crosse, and to run, operate, manage, and control as a railroad the whole line of said road, subject to the obligation to account and pay out to said receiver the net earnings and income of said eastern division under the order and directions of this honorable court.

Your petitioner therefore prays that your honor will grant an order directing the said Hans Crocker, receiver as aforesaid, to deliver to your petitioner all and singular the said railroad from the city of Milwaukee to the city of La Crosse, its road-bed, track, and locomotives, engines, rolling stock, tools, implements, supplies, together with its depots, station-houses, engine-houses, and all other property belonging to said railroad, or used in operating the same, now in the possession of or subject to the control of said receiver, together with its appurtenances, rights, and franchises thereto appertaining, and that your petitioner
558 be let into the possession and enjoyment thereof. Your petitioner hereby offering to account to said receiver for the net tolls and income of said eastern division, under the direction and supervision of this honorable court, and to submit to such rules and regulations in respect thereto as this honorable court shall make and establish, and for such further and such other order as the court may see fit to grant.

And your petitioners will ever pray, &c.

MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

DISTRICT OF WISCONSIN, *ss:*

David M. Hughes, being duly sworn, deposes and says that he is the

president of the Milwaukee and St. Paul Railway Company; that he has heard read the foregoing petition of The Milwaukee and St. Paul Railway Company, signed by said company; that he knows the contents thereof; and that the same is true of his own knowledge, except as to the matter stated therein on information and belief, and as to those matters he believes it to be true.

D. M. HUGHES.

Sworn to before me May 6, 1863.

J. M. MILLER,
Clerk.

559 And afterwards, on the 7th day of May, 1863, came The Milwaukee and Minnesota Railroad Company and Graham and Scott, by Mr. Carpenter, their solicitors, and filed the following, to wit:

Objection to hearing the petition of St. Paul Company.

In district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOULTER, AND Shepherd Knapp
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others. } In equity.

The Milwaukee and Minnesota Railroad Company, Lawrence C. Graham, and Donald D. Scott come and object to any hearing of the petition of The Milwaukee and St. Paul Railway Company, filed May 6, 1863, until the same is reached, according to rule 6 of rules prescribed by the Supreme Court for practice in the courts of equity of the United States.

MATT. H. CARPENTER,
Solicitor.

560 Whereupon it is ordered by the court (Mr. Carpenter on behalf of the Milwaukee and Minnesota Railroad Company, and Mr. Ryan on behalf of William Cransbery and Orville E. Odder, objecting) that the receiver deliver over to the said Milwaukee and St. Paul Railway Company the said railroad and appurtenances between Portage City and La Crosse, and the rolling-stock and property specially described in the decree.

And it is further ordered by the court that a full and perfect inventory be taken by the receiver of all rolling-stock other than the forty box cars specially mentioned in the decree, and of all personal property belonging to the said La Crosse and Milwaukee Railroad Company, including such as has been procured by the receiver and now on hand, and that he make report of the same on the eighth day of June next.

And, as in pursuance of the act incorporating the La Crosse and Milwaukee Railroad Company, a continuous road has been constructed and operated between La Crosse and Milwaukee, and the interests of the public requiring that the said road as constructed and operated shall continue to be so operated, it is ordered by the court (reserving the right to rescind, change, or modify this order at any time here-
561 after) that the said Milwaukee and St. Paul Railway and the receiver, who continues to be the receiver of the eastern end or di-

vision of said La Crosse and Milwaukee Railroad between Milwaukee and Portage City, jointly operate said road between La Crosse and Milwaukee without interruption, and that the said Milwaukee and St. Paul Railway Company and the receiver jointly employ all the agents and persons necessary for the proper operating of said road; that the revenues of said road be paid to the receiver as heretofore, who shall keep all accounts and books for the inspection of the said company, and said company may keep duplicate books; and that all payments and disbursements for necessary expenses in operating said road shall be paid out of the joint fund, each division of said road *road* to be entitled to its proportion of revenues, and to be charged its proportion of disbursements; and that the said receiver pay coupons of bonds on prior mortgages as heretofore.

562 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district, this seventeenth day of March, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the said United States the ninety-seventh.

[SEAL.] EDWARD KURTZ,
Clerk.

(Indorsed:) U. S. dist. court, Wisconsin. Greene C. Bronson et al. vs. La Crosse & Milwaukee Railroad Co. et al. Certified copy. Petition of Mil. & St. Paul Railway Co. & orders thereon. Filed May 6, 1863, Aug 2, '72.

563 *Exhibit No 1b. Graham's testimony, p. 282.—Fr. Bloodgood, examiner.*

This agreement, made and entered into this 25th day of November, A. D. 1861, by and between Moses Kneeland & James Ludington of the first part, and Lawrence G. Graham and Donald D. Scott of the second part, witnesseth:

That whereas the said parties of the second part are the owners of a certain judgment obtained & docketed in the district court of the United States for the district of Wisconsin, on the 11th day of January, 1860, in favor of the said Graham & Scott and against The La Crosse & Milwaukee Railroad Company, for the sum of forty-four thousand three hundred and ninety-two dollars and thirty-two cents damages and twenty dollars and eighty-six cents costs, and also are the owners of eighty thousand second mortgage land grant Helfenstien mortgage bonds on the western division of the La Crosse & Milwaukee Railroad Company:

Now, therefore, this agreement witnesseth, that the said parties of the second part in consideration of the sum of one dollar to each of them in hand paid by the said parties of the first part, the receipt whereof is hereby acknowledged, do hereby promise and agree to and with said parties of the first part, that upon the payment to them of the full amount of the judgment aforesaid, principal, interest and costs,

564 to the time of such payment, whether realized & collected from the judgment or bonds as aforesaid or from both, they will sell and assign to the said parties of the first part an undivided half interest in & to the remaining and unpaid portion of said judgment and bonds aforesaid with the unpaid coupons thereto attached. It being understood and agreed by and between the parties hereto, that the bonds as aforesaid are to be delivered to M. H. Carpenter, of the city of Milwaukee, for the mutual interest of the parties hereto.

And the said parties of the first part, in consideration aforesaid, do hereby promise and agree to prosecute the judgment and bonds aforesaid and use their best endeavors to collect the same.

It is further agreed that if said Graham & Scott shall out of the bonds get the amount of said judgment, that then the said Graham & Scott will release all claim to make their half of the said judgment out of the property conveyed by the La Crosse & Milwaukee Railroad Company to C. D. Nash, & by said Nash conveyed to said Kneeland & Ludington. This last paragraph is to have no force whatever until the said Graham & Scott shall actually obtain and receive the amount of said judgment as aforesaid out of said bonds.

565 The said Kneeland & Ludington shall pay all charges of Butler & Palmer, attorneys in foreclosing the Helfenstein mortgage, & said Graham & Scott are to employ and pay Mat. H. Carpenter as counsel in said foreclosure case.

Witness our hands this 26th day of November, A. D. 1860.

MOSES KNEELAND.
JAMES LUDINGTON.
LAWRENCE G. GRAHAM.
DONALD D. SCOTT.

It is hereby further agreed that the amount of four thousand one hundred dollars shall be added to the amount of said Graham & Scott's judgment, that having been deducted for certain collaterals sold by them, and that this foregoing agreement shall be taken to be binding upon the parties to the same, with this addition to its terms: That said Graham & Scott are to receive the amount of their said judgment and said $4,100 & interest from date of said judgment instead of the amount of the judgment only as in said agreement expressed.

December 6, 1861.

MOSES KNEELAND.
JAMES LUDINGTON.
LAWRENCE G. GRAHAM.
DONALD D. SCOTT.

566 *Exhibit No. 2b, Graham's testimony, p. 390.—Fr. Bloodgood, examiner.*

This agreement made this 26th day of September, A. D. 1862, between the Milwaukee & Minnesota Railroad Company of the first part, and Lawrence G. Graham and Dolnald D. Scott, party of the second part, witnesseth:

That the party of the first part in consideration of the stipulations hereinafter mentioned, on behalf of the party of the second part to be kept and performed, has and hereby does agree to and with said second party, that said first party will and hereby does buy of said second party a certain judgment in favor of said second party against the La Crosse & Milwaukee Railroad Company, rendered by the district court

of the United States for the district of Wisconsin, and agrees to pay said party of the second part therefor as follows, viz: seven thousand five hundred dollars within three months after the party of the first part shall come into possession of the La Crosse & Milwaukee Railroad, or the eastern division thereof, and ten thousand dollars every six months after said payment until the full amount of said judgment shall be paid, and so far and so fast as said party of the first part shall make any payment or payments under this agreement, the said party
567 of the first part shall become interested in said judgment to the amount so paid, and when the full amount is paid or security given as provided under this contract, then said judgment shall be assigned to said party of the first part by the said party of the second part.

The party of the first part agree that within nine months from this date they will secure the performance of this agreement by depositing with Mat. H. Carpenter bonds of said party of the first part, under a five-million issue, secured by mortgage on said railroad, to secure the payment of the then unpaid amount under this contract, at the rate of seventy-five cents on the dollar of said bonds, or, at the option of said party of the first part, the amount of said bonds at par guaranteed by Moses Kneeland, personally.

[SEAL.] MILWAUKEE & MINNESOTA R. R. Co,
By MOSES KNEELAND, *President.*

Attest:
DWIGHT W. KEYES, *Secretary.*

LAWRENCE G. GRAHAM.
DONALD D. SCOTT,
By L. G. GRAHAM.

(Endorsed:) Compared with the original May 18, 1864. Matt. H. Carpenter.

568 *Exhibit No.* 1*a*, *Ludington's testimony, p.* 141.—*Fr. Bloodgood, examiner.*

Know all men by these presents that the La Crosse and Milwaukee Railroad Company, a corporation created, organized, and existing under and pursuant to the laws of the State of Wisconsin, for and in consideration of one dollar, to it paid by James Ludington, of the city of Milwaukee, in said State of Wisconsin, the receipt whereof is hereby acknowledged, has remised, released, and forever discharged, and by these presents does, for itself, its successor or successors, assignee or assignees, hereby remise, release, and forever discharge the said James Ludington of and from all and all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, vacancies, damages, judgments, extents, executions, claims, and demands whatsoever, in law or in equity, which against the said James Ludington the said La Crosse & Milwaukee Railroad Company ever had, now has, or which said company or its successor or successors hereafter can, shall, or may have, for, upon, or by reason of any matter, cause, or thing whatsoever, including any and all claim whatsoever which the said La Cross and Milwaukee Railroad Company has
569 or may or can have against the said James Ludington for or by reason of any act or thing by him done, suffered, permitted, or omitted by him as a director, agent or officer of the said La Crosse and Milwaukee Railroad Company at any time prior to the date hereof.

In witness whereof the said railroad company has hereto affixed its corporate seal and caused these presents to be subscribed by William Platt, vice president, & Edward P. Whaling, secretary, this twenty-fourth day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

LA CROSSE & MILWAUKEE R. R. CO., [SEAL.]
By WM. PLATT, *V. Pres't.*
EDWARD P. WHALING, *Secretary.*

570 *Exhibit No. 2a.—Fr. Bloodgood, examiner.*

Resolved, That Wm. Platt, vice-president of this company, and E. P. Whaling, secretary, be and they are hereby authorized and instructed to execut' and acknowledge, in the name and on behalf of this company, and affix its corporate seal to separate releases, and deliver the same to E. G. Ryan for him to deliver to each of the following-named persons, to wit: Moses Kneeland, Edwin Townsend, James Ludington, Edwin H. Goodrich, and Byron Kilbourn, each of which releases shall be substantially in the words following, to wit:

Know all men by these presents that the La Cross and Milwaukee Railroad Company, a corporation created, organized, and existing under and pursuant to the laws of the State of Wisconsin, for and in consideration of one dollar, to it paid by , of the city of Milwaukee, in said State of Wisconsin, the receipt of which is hereby acknowledged, has remised, released, and forever discharged, and by these presents does, for itself, its successor or successors, assignee or assignees, hereby remise, release, and forever discharge the said of and from all and all manner of actions, causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, vari-
571 ances, damages, judgments, extendies, executions, claims, and demands whatsoever, in law or equity, which against the said the said La Cross and Milwaukee Railroad Company ever had or now has, or which said company or its successor or successors hereafter can, shall, or may have for, upon, or by reason of any matter, cause, or thing whatsoever, including any and all claims whatsoever which the said La Crosse & Milwaukee Railroad Company has or may or can have against the said for or by reason of any act or thing by him done, suffered, permitted, or omitted by him, as director, agent, or officer of the said La Crosse and Milwaukee Railroad Company, at any time prior the date hereof.

In witness whereof the said railroad company has hereto affixed its corporate seal and caused these presents to be subscribed by the , this day of May in the year of our Lord one thousand eight hundred and fifty-nine.

MILWAUKEE, *May 24th*, 1859.

I hereby certify that the foregoing is a copy of a resolution adopted by the board of directors of this company in session this day.

EDWARD P. WHALING, *Sec'y.*

572 *Exhibit No. 3a.—Fr. Bloodgood, exam'r.*

Whereas this company did by deed bearing date Sept. 8, 1855, sell and

convey unto Chas. D. Nash the following described real estate situate in the 4th ward of the city of Milwaukee, to wit: Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14, in block 155; lots 1 & 4, in block 156, one undivided eighth part of block 157, except lot 8, with bayou adjoining; lots 10, 12, 13, 14, & east half of lot 15; one undivided third of lots 8, 9, 16, & 17, in block 158; & did also convey to said Nash by deed bearing date July 14, 1856, the following described lots in the fifth ward of the city of Milwaukee, to wit, lots 9, 10, & 11, in block 3, & lots 1, 2, & 3, in block 47, & received from said Nash his bond of indemnity against certain incumbrances upon said property for which this co. was liable.

And whereas the title held by other parties under the said Nash to the above lands have been questioned & it has been held that the company have a right to reclaim the said property & the title so conveyed to the said Nash upon payment of the value of the original consideration paid by said Nash therefor, & of the permanent improvements on said lands, which amounts to a large sum.

573 And whereas the board is well informed that it is very doubtful if the said lands are now of the value of such purchase & improvements.

And whereas the title of this co. thereto has been foreclosed under the third sinking fund mortgage.

And whereas, for the purpose of settling with the co. organized or to be organized under such foreclosure, Moses Kneeland, James Ludington, claiming to own said lands under the said Nash, have requested this co. to confirm the said sale by conveyance to them of the said lands.

And whereas, if this co. had the right, they have under the circumstances neither means nor object in reclaiming the said title, & this board consider it an act of justice to do what it can to settle the title of the parties in interest.

And whereas it is understood that the litigation in which the title of said Nash was impeached has been settled:

Therefore it is resolved that William Platt, vice-president and the secretary execute the quitclaim deed of said lands to said Kneeland & Ludington now presented on their behalf of the board & be placed in the hands of E. G. Ryan to be delivered to said Kneeland & Ludington.

MILWAUKEE, *May 24th*, 1859.

I certify that the foregoing is a copy of preamble & resolution passed by the board of directors of the La Crosse & M. R. R. Co. in session this day.

EDWARD P. WHALING, *Sec'y.*

574 UNITED STATES OF AMERICA,
District of Wisconsin:

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

You are hereby commanded that of the goods and chattels of the La Crosse & Milwaukee Railroad Company, in your district, you cause to be made the sum of forty-four thousand three hundred and ninety-two dollars and thirty-two cents which Lawrence G. Graham & Donald D. Scott, lately in the district court of the United States for the district of Wisconsin aforesaid, recovered against it for their damages which they had sustained on occasion of the non-performance of certain promises and undertakings, and also twenty dollars and eighty six cents, which were

awarded to the said Lawrence G. Graham & Donald D. Scott for their costs and charges by them about their suit in that behalf expended, whereof the said The La Crosse & Milwaukee Railroad Company was convicted as appears to us of record. And if sufficient goods and chattels cannot be found, then you are hereby commanded that you cause the amount of such judgment as aforesaid to be made of the lands and tenements of said The La Crosse & Milwaukee Railroad Company which it shall have had at the time of the docketing of such judgment, to wit, on the eleventh day of January, one thousand eight hundred and sixty, or at any time thereafter; and have you that money before the judge of the said district court at Milwaukee on the first Monday of April next, then and there to render to the said Lawrence G. Graham & Donald D. Scott for their damages and costs aforesaid. And have you then and there this writ.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this 26th day of January, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States the eighty-fourth.

[SEAL.] J. M. MILLER, *Clerk.*

575 By virtue of this writ and in pursuance of instructions of plaintiffs' attorneys I have this 27th day of January, 1860, levied upon and taken in execution the following described property, to wit: Lots 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, & 14 in block 155; lots 1 & 4 in block 156; also the undivided ½ part except lot 8 of block 157; also the bayou adjoining the said last-mentioned block, and thence running to the Milwaukee River; also the undivided ½ part of lots 8, 9, 16 & 17 in block 158; also lots 10, 12, 13 & 14 & east ½ of lot 15 in block 158, all in the 4th ward; also lots 9, 10 & 11 in block 3, and lots 1, 2 & 3 in block 47, in 5th ward of the city of Milwaukee, in this district.

J. H. LEWIS, *Marshal,*
By F. HENRY, *Dep.*

(Indorsed:) 30. July term, 1860. Execution docket, 205–60. Lawrence G. Graham & Donald D. Scott vs. The La Crosse & Milwaukee Railroad Company. Fi. fa.

Collect debt & damages	$44,392 32
Interest Jan. 11, 1860.	
Costs, clerk	$8 60
" marshal	2 26
" attorney	10 00
	20 86

Carpenter & Gridley, plaintiffs' attorneys.
Rec'd Jan'y 27th, 1860, at 10 o'clock a. m.

576 The La Crosse & Milwaukee Railroad Company and The Milwaukee, Fond du Lac & Green Bay Railroad Company.

Articles of agreement.

Articles of agreement made and entered into this twenty-third day of January, in the year of our Lord one thousand eight hundred and fifty-four, between the La Crosse and Milwaukee Railroad Company of the

one part, and the Milwaukee, Fond du Lac and Green Bay Railroad Company of the other part, witnesseth as follows:

First. The La Crosse & Milwaukee Railroad Company and the Milwaukee, Fond du Lac and Green Bay Railroad Company, hereby agree to consolidate the capital stock of their respective companies, and to merge into one company all the rights, privileges, grants, and immunities which they respectively possess by virtue of their respective charters, together with all the rights hitherto acquired by them respectively under and by virtue thereof.

Second. It is mutually agreed and understood by and between the parties hereto, that the consolidated company shall assume and do hereby assume all the liabilities of every name and nature of each respective company that now exists or that may arise or grow out
577 of their respective transactions heretofore, and that they will pay off, satisfy and discharge the same in manner and form as the several companies in their original and separate capacity in law are bound to do.

Third. It is also mutually agreed, understood by and between the parties hereto, that any and all persons residing northerly from the junction of the two roads, or the point of their emergence, about eighteen miles from the city of Milwaukee, who have subscribed to the capital stock of the Milwaukee, Fond du Lac and Green Bay Railroad Company, and have paid therefor in what is commonly called farm mortgages, shall on request and on the surrender of their respective certificates of stock, have their respective mortgages surrendered to them to be cancelled: Provided, however, in case such mortgages shall not be within the control of the consolidated company when such request shall be made, then the same shall be procured as soon thereafter as practicable, and shall be delivered up for the purpose of cancellation as aforesaid, on surrender of the stock certificates as aforesaid.

Fourth. It is also mutually agreed and understood that all ordinary subscriptions of stock to the said Milwaukee, Fond du Lac and Green Bay Railroad Company northerly from the point referred to in
578 the last preceding article may, on the application of the respective subscribers, be cancelled on surrender of the stock certificate if any has been issued, and in all cases where payments have been made thereon, that the amount thereof shall be refunded to the subscriber in warrants drawn on the treasurer of the consolidated company, payable in two years with interest payable annually, all applications for cancellation of stock to be made to the consolidated company.

Fifth. It is also mutually understood and agreed that all subscriptions of stock made in the city of Milwaukee or on the line of the road northerly therefrom to the junction, to the said Milwaukee, Fond du Lac & Green Bay Railroad Company, is to be called in by the consolidated company in the same manner and the same rate per cent. in instalments, as the La Crosse & Milwaukee Company by its charter are authorized to call, so far as the same may be practicable.

Sixth. All stock heretofore subscribed to the capital stock of the Milwaukee, Fond du Lac & Green Bay Railroad Company, at Oshkosh, Fond du Lac, or adjacent thereto, or between the first named place and the junction of the two roads referred to in article "Third," and all stock that may hereafter be subscribed to the consolidated com-
579 pany, under the express stipulation of its being applied to the construction of a road from the junction aforesaid in the direction of the cities of Fond du Lac and Oshkosh, and all means that may hereafter been raised for that purpose, northerly from the junction, whether

in the loan of the credit of said two last mentioned cities, or the counties through which the proposed line of road shall pass, shall all be held by the consolidated company as a sacred trust for such objects as is hereafter expressed in the seventh article, and for no other purpose whatever shall the avails thereof be made applicable, and to the performance of which the consolidated company hereby irrevocably pledges its faith.

Seventh. It is also mutually agreed and understood by and between the parties hereto, that all the means that may be raised from the sources specified in the last preceding article and for the particular objects therein mentioned, when converted into money, shall be expended in the construction of the road from the junction northerly in the direction of Fond du Lac and Oshkosh.

Eighth. It is also mutually agreed and understood that the balance of the bonds of the city of Milwaukee loaned to the Milwaukee, Fond du Lac & Green Bay Railroad Company, not yet delivered, when
580 delivered shall also be faithfully applied in the construction of the road in the direction of Fond du Lac and Oshkosh.

Ninth. The consolidated company shall appropriate all its resources within it s control (except those reserved for the purpose hereinbefore specified) to the speedy completion of its line adopted by the La Crosse & Milwaukee Railroad Company to Portage City, and shall have the first section thereof from Milwaukee to the junction completed on or before the first day of August next, and to Horicon on or before the first day of October next thereafter, and shall also, if practicable, make some arrangement with the Rock River Union Valley Road for a connexion at or near that point and by which there may be secured a through connexion between the cities of Milwaukee and Fond du Lac by the first day of December next, and that balance of the road to Portage City shall be completed at the earliest day possible.

Tenth. It is also mutually agreed and understood that immediately after the completion of the road to Portage City, as provided in the last preceding section, and as soon thereafter as there shall be raised of available resources an amount of at least two hundred thousand dollars in stock or otherwise, at the cities of Fond du Lac and Oshkosh and between those points and the junction, with the specific
581 object of constructing a road on the line at present adopted by the Milwaukee, Fond du Lac and Green Bay Railroad Company, then and in that case, the consolidated company shall apply all its resources within its control (except such aid as may have been obtained from the city of Milwaukee or other cities and counties on the line of the La Cross & Milwaukee Railroad Company, and excepting also the farm mortgages which have or may hereafter be taken by the latter named company with a specific view to the construction of their present contemplated line of road) to the construction and completion of a road from the junction aforesaid to the cities of Oshkosh and Fond du Lac.

Eleventh. The consolidated company are as soon as practicable to procure to be cancelled a certain bond granted by James K. Rogers, Walter P. Flanders & others to the city of Milwaukee, as security for the Milwaukee, F. & Green Bay R. R. Company, and in the mean time shall keep them and their co-obligors indemnified and saved harmless therefrom in all things.

Twelfth. It is also mutually agreed and understood that the corporate name and style of the consolidated company shall hereafter be The La Crosse & Milwaukee Railroad Company, until otherwise altered or changed.

582 Thirteenth. The first directors of the consolidated company

hall be thirteen directors who shall be elected by the stockholders of the La Crosse & Milwaukee Railroad Company on the first day of February, 1854, and Moses Kreeland and Edwin Townsend, of the present board of the Milwaukee, Fond du Lac & Green Bay R. R. Co.

Fourteenth. The first annual election of directors of the consolidated company shall be in the year 1855, on the day fixed by the present La Crosse & Milwaukee Company, and in pursuance of its present charter and by-laws in that behalf.

Fifteenth. It is also mutually agreed and understood that no distinction shall be made in the value of the stock in the respective companies, but both alike shall be regarded at their par value, and the consolidated company, on surrender of old stock certificates, shall issue new ones from the office of their company.

In witness whereof the executive committee of the La Crosse & Milwaukee Railroad Company, on the part of said company, and the special committee of the Milwaukee, Fond du Lac and Green Bay Railroad Company, on the part of said company, have hereunto set their hands on the day and date first above written, subject to the ratification of the respective boards of directors of each of said companies.

583

STODDARD JUDD,
BYRON KILBOURN,
EDWIN H. GOODRICH,
JAMES LUDINGTON,
Executive Committee of the La Crosse & Milwaukee Railroad Company.
MOSES KNEELAND,
EDWIN TOWNSEND,
S. H. ALDEN,
Special Committee of the Milwaukee, Fond du Lac & Green Bay Railroad Company.

We, the undersigned, a majority of the board of directors of the Milwaukee, Fond du Lac & Green Bay Railroad Company, hereby approve of the foregoing contract and concur therein.

Dated 25 January, A. D. 1854.

JAMES KNEELAND.
S. H. ALDEN.
A. FINCH, JUNIOR.
MOSES KNEELAND.
EDWIN TOWNSEND.

Resolved, That the contract between the La Crosse & Milwaukee Railroad Company and the Milwaukee, Fond du Lac & Green Bay Railroad Company, executed by the executive committee of the first aforesaid company, and a special committee of the last aforesaid company, for the consolidation of said companies, dated January 23, 1854. be and is hereby ratified and confirmed, and that it be referred to the executive committee of this board, with full power and authority for and

584 on the part of this board to execute for and in behalf of this company the aforesaid contract, with such modifications as will car'y out the general objects of said contract.

I certify the above to be a resolution of the board of directors of the La Crosse & Milwaukee Railroad Company, adopted and recorded in their minutes of proceedings at this date.

Office of the La Crosse & Milwaukee R. R. Co., February 1, 1854.

LEVI BURNELL, *Sec'y.*

Resolved, That Moses Kreeland, S. H. Alden and Edwin Townsend, the special committee heretofore appointed to execute a contract with the La Crosse & Milwaukee Railroad Company for consolidation, are hereby fully empowered and authorized to do all needful things for the concluding and delivery of the same.

I hereby certify that the above is a true copy of a resolution passed by the board of directors of the Milwaukee, Fond du Lac & Green Bay Railroad Company, in session Feb'y 4, 1854.

[SEAL.] J. N. MASON,
Secretary.

Whereas, by an act of the legislature of the *the* State of Wisconsin, approved March 9, 1854, entitled "An act to amend an act to
585 incorporate the La Crosse & Milwaukee Railroad Company," approved April 2nd, 1852, full power and authority has been conferred upon the La Crosse & Milwaukee Railroad Company to consolidate its capital stock with the Milwaukee, Fond du Lac & Green Bay Railroad Company, upon such terms as might have been or might thereafter be agreed upon by and between the said railroad companies respectively, and whereas such consolidation had heretofore been agreed upon in manner and form and to the effect in the foregoing articles of agreement contained and expressed: Now, therefore, we, the undersigned, by virtue of and in pursuance of the power in us vested, do hereby ratify, confirm and declare effectual for all purposes whatsoever, the said the foregoing contract and all the stipulations therein contained and expressed, as the act and contract of consolidation of the respective companies aforesaid.

In witness whereof we have hereunto set our hands, this eleventh day of March, 1854.

STODDARD JUDD,
JAMES LUDINGTON,
EDWIN H. GOODRICH,
BYRON KILBOURN,
Executive Committee of the La Crosse & Milwaukee Railroad Company.
MOSES KNEELAND,
EDWIN TOWNSEND,
S. H. ALDEN,
Special Committee of the Milwaukee, Fond du Lac and Green Bay Railroad Company.

586 STATE OF WISCONSIN,
Milwaukee County, ss:

Be it remembered that on this eleventh day of March, A. D. 1854, personally appeared before me the foregoing named Moses Kneeland, Edwin Townsend, and S. H. Alden, special committee of the Milwaukee, Fond du Lac & Green Bay Railroad Company, and Stoddard Judd, James Ludington, Edwin H. Goodrich, and Byron Kilbourn, executive committee of the La Crosse & Milwaukee Railroad Company, to me known to be the parties who executed the foregoing contract, and who acknowledged the execution of the same as their free act and deed, for the uses and purposes therein mentioned.

J. N. MASON,
Notary Public, Mil. County.

Recorded March 28th, A. D. 1854, at 3¼ o'clock p. m.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 43 of deeds, on pages 43-47; that I have carefully compared the same with said records, and that it is the whole thereof.

587 In testimony whereof I have hereunto set my hand and affixed my official seal this fourth day of August, 1873.

[SEAL.] F. C. BEST,
Register of Deeds, Mil. Co., Wis.

Milwaukee & Watertown R. R. Co. to La Crosse & Mil. R. R. Co.—Agreement & deed.

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company and the Milwaukee and Watertown Railroad Company, this twentieth day of September, A. D. 1856.

These articles witness that the La Crosse & Milwaukee Railroad Company, in consideration of the stipulations and agreements of the Milwaukee & Watertown Railroad Company, hereinafter contained, has purchased, and does hereby purchase, the Milwaukee & Watertown Railroad and all its franchises and estate, real, personal, and mixed, and all the stock shares belonging to said company, and all debts, demands, and claims due or owing to said company; and has consolidated and does hereby consolidate the said Milwaukee & Watertown Railroad Company and all its franchises with the said La Crosse and Milwaukee Railroad Company, under the name & style of the La Crosse &
588 Milwaukee Railroad Company, and agrees to pay for the said franchises, estate, stock, and debts on the terms, conditions, and in the manner hereinafter mentioned.

And that the said Milwaukee & Watertown Railroad Company, in consideration of the payments and stipulations of the La Crosse & Milwaukee Railroad Company hereinafter mentioned, has sold, conveyed, and transferred, and by these presents does sell, convey, and transfer, to the La Crosse & Milwaukee Railroad Company all the franchises and estate, real, personal, and mixed, of the said Milwaukee & Watertown Railroad Company, and all the stock shares belonging to or installments on stock due or to become due to said Milwaukee & Watertown Railroad Company, and all debts, demands, and claims due or owing to said company, and the said Milwaukee & Watertown Railroad Company has consolidated, and does by these presents consolidate, the said Milwaukee & Watertown Railroad Company with the said La Crosse & Milwaukee Railroad Company, under the name and style of the La Crosse & Milwaukee Railroad Company, and does agree to receive payment for the same in the manner hereinafter mentioned.

The said sale, conveyance, transfer, and consolidation are made upon the terms, conditions, and in the manner following, that is to say:

589 1st. The La Crosse & Milwaukee Railroad Company shall, so soon after the execution of these presents as the same can be prepared, make an issue of its coupon bonds, based upon its general credit, to an amount equal to the amount at par of the full paid capital stock held by the stockholders of the Milwaukee and Watertown Rail-

road Company, which stock shall not exceed in the whole the sum of five hundred thousand dollars; and the said bonds shall be payable in the city of Milwaukee in five years from the first day of October next, bearing interest at the rate of seven per cent. per annum, payable semi-annually, and shall be in sums of not less than one hundred dollars. And the said La Crosse & Milwaukee Railroad Company shall hold said bonds for the term of one year from the date hereof, subject to the right of any and every person holding full paid stock shares in the said Milwaukee & Watertown Rail Road Company, on demand at the company's office in Milwaukee, to have and receive in exchange for such stock shares an amount of such bond equal to the amount of stock shares at par which such person may have or hold in said Milwaukee & Watertown Rail Road Company; but any such stockholder who may neglect or fail to make such exchange within said period of one
590 year, shall forfeit all right to make such exchange, but shall be entitled at any time thereafter, on the surrender of the certificates of full paid stock so held by him, to demand and receive from the La Crosse & Milwaukee Rail Road Company certificates of full paid stock in said last named company equal in amount at par to the amount of full paid stock held by such person in the Milwaukee & Watertown Rail Road Company; and any and every such stockholder upon receiving any such bonds or stock of the La Crosse & Milwaukee Rail Road Company shall execute to the president of the La Crosse & Milwaukee Rail Road Company, in trust for said company, an assignment of such stock and of his interests as a stockholder in the said Milwaukee & Watertown Rail Road Company.

2nd. The La Crosse & Milwaukee Railroad Company undertake and agree to assume, pay, and discharge all contracts, debts, bonds, and obligations whatever of the Milwaukee and Watertown Railroad Company, according to the tenor and effect, true intent and meaning of such contracts, debts, bonds, and obligations.

3rd. The Milwaukee & Watertown Railroad Company hereby sell and convey to the La Crosse & Milwaukee Railroad Company all their rights, privileges, franchises, and immunities, and all their property and rights of property and estate, real, personal, and mixed, in possession or
591 expectancy, and wheresoever situated, embracing all land, right of way, buildings and fixtures of all kinds, machinery, rolling-stock and equipments of every kind, and all other property, not excluding any description or article of property not expressly specified, subject to all existing liens thereon, together with all stock-shares belonging to said company, and all instalments on stock due and unpaid, or to become due hereafter, and all debts and demands of every kind due and owing to said company, or to become due, together with all contracts, books, papers, records, and archives belonging or in any manner appertaining to said Milwaukee & Watertown Railroad Company.

4th. At the time of or before the execution and delivery of these articles by the said two companies, two of the directors of the La Crosse and Milwaukee Railroad Company shall resign their places as directors in that company, and the vacancies thus created shall be immediately filled by the election of William B. Hibbard and Eliphalet Cramer in their places, and the board of directors of the La Crosse & Milwaukee Railroad Company, after such consolidation, shall be composed of twelve members, nine of whom shall be the present directors of the La Crosse & Milwaukee Railroad Company who do not resign, together with the said Hibbard & Cramer and Alexander Mitchell.

592 5th. That immediately upon the execution and delivery of these

presents, the separate organization of the Milwaukee & Watertown Railroad Company shall cease and determine, and the board of directors of the Milwaukee & Watertown Railroad Company shall deliver over to the board of directors of the La Crosse and Milwaukee Railroad Company all the property, books, papers, vouchers, records, and archives in their custody or under their control, and every officer of the Milwaukee & Watertown Railroad Company shall deliver over to the corresponding officer of the La Crosse and Milwaukee Railroad Company all property, books, papers, contracts, vouchers, records, and archives in the custody or under the control of such officer of the Milwaukee & Watertown Railroad Company; and all servants, agents, and subordinates of the Milwaukee & Watertown Railroad Company shall hold their respective places and employments from and under the La Crosse & Milwaukee Railroad Company, in the same manner as corresponding agents, servants, and subordinates of the La Crosse & Milwaukee Railroad Company. And all the property, real, personal, and mixed, wheresoever situate and however held, of the Milwaukee & Watertown Railroad Company shall vest and be vested in the La Crosse and Mil-
593 waukee Railroad Company, and be held by them as fully as the same would or could have been held by the Milwaukee & Watertown Railroad Company if these presents had not been executed.

6th. That the La Crosse and Milwaukee Railroad Company shall prosecute and complete the construction of the line of the Milwaukee & Watertown Railroad, between Watertown and Columbus, in pursuance of the existing contracts, with all practicable dispatch.

7th. In order to effect a speedy and satisfactory settlement of all unadjusted claims against the Milwaukee & Watertown Railroad Company, the directors of said company who shall become directors of the La Crosse & Milwaukee Railroad Company by virtue and in pursuance of this agreement shall, together with the secretary for the time being of the La Crosse & Milwaukee Railroad Company, constitute a committee, duly authorized and empowered on the part of said last-named company to examine, audit, and certify all just accounts, claims, and demands existing against said Milwaukee & Watertown Railroad Company at the date of these presents; but no such account, claim, or demand shall be allowed or paid until allowed by the directors of the La Crosse & Milwaukee Railroad Company.

594 In testimony whereof these articles are signed by the president and secretary of the said La Crosse & Milwaukee Railroad Company and the said Milwaukee & Watertown Railroad Company, and sealed with the corporate seals of said companies, respectively, by virtue of the authority of a resolution of each of said boards the day and year first above written.

[CORPORATE SEAL.] BYRON KILBOURN,
Pres. La C. & Mil. R. R. Co.

Attest:
EDWIN H. GOODRICH,
Sec'y La Crosse & Mil. R. R. Co.

[CORPORATE SEAL.] WM. B. HIBBARD,
Pres't M. & W. R. R. Co.

J. L. HATHAWAY,
Sec'y Milwaukee & Watertown R. R. Co.

In presence of—
MOSES KNEELAND.
ALEX. MITCHELL.

STATE OF WISCONSIN,
Dane County, ss:

Be it remembered that on this *this* the 20th day of September, A. D. 1856, personally appeared before me, one of the justices of the supreme court of the State aforesaid, being thereunto duly and lawfully authorized, the above-named Byron Kilbourn, as president of the La Crosse & Milwaukee Railroad Company, to me personally known,
595 and also to me personally known as such president of the railroad company aforesaid, and also the above-named Edwin H. Goodrich, the secretary of the railroad company aforesaid, in like manner to me personally known as such secretary aforesaid, who did then and there severally acknowledge that they did severally sign the foregoing instrument and deliver the same for the uses and purposes therein mentioned, as their free act and deed, and for the like purpose did cause the seal of the said company to be thereunto affixed, freely and voluntarily, for the purposes therein expressed.

Also, on the day and year and at the place aforesaid, personally appeared before me William B. Hibbard, to me personally known, and likewise known to be the president of the Milwaukee and Watertown Railroad Company above mentioned; and then and there also appeared before me J. L. Hathaway, the secretary of the company last aforesaid, in like manner to me personally known, who did then and there severally acknowledge that they severally, and each and all of the foregoing persons above named, officially, severally acknowledged that they did severally and officially sign and execute the foregoing instrument freely and voluntarily for the uses and purposes therein expressed, and for like purposes did cause the respective seals of the several
596 corporations therein mentioned to be thereunto affixed.

In witness whereof I have hereunto signed my name the day and year above written.

A. D. SMITH,
Ass't Justice Sup. Court.

Recorded Sept. 23rd, 1856, at 4 o'clock p. m.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office as recorded in volume 54 of deeds, on pages 176, 7, 8, & 9; that I have carefully compared the same with said records and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this fifth day of August, 1873.

[SEAL.]

F. C. BEST,
Register of Deeds, Mil. Co., Wis.

597 *La Crosse & Mil. Rail R. Co. to Charles D. Nash. Deed.*

This indenture, made this eighth day of September, in the year eighteen hundred and fifty-five, between the La Crosse & Milwaukee Railroad Company, party of the first part, and Charles D. Nash, of the city of Milwaukee, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of ten thousand dollars to them paid by the said party of the second part, the receipt whereof is hereby acknowledged, have bargained,

sold, remised, released, and forever quitclaimed, and by these presents do bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, his heirs, and assigns all the right, title, estate, and interest whereof the said party of the first part is now seized or entitled unto, in all those certain lots or parcels of land situate and being in the fourth ward of the city of Milwaukee, and known as lots one (1), two (2), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), and fourteen (14), in block one hundred and fifty-five (155); lots one (1) and four (4), in block
598 one hundred and fifty-six (156); the one undivided eighth part of block one hundred and fifty-seven (157), except lot eight (8), and of the bayou adjoining said last-mentioned block, and thence running to the Milwaukee River; the undivided one-third part of lots eight (8), nine (9), sixteen (16), and seventeen (17), in block one hundred and fifty-eight (158), and the whole of lots ten (10), twelve (12), thirteen (13), fourteen (14), and the east half of lot fifteen (15) in said block one hundred and fifty-eight (158), together with the hereditaments and appurtenances.

To have and to hold the above bargained premises to the said party of the second part, and to his heirs and assigns, forever, it being expressly understood between the parties hereto that this conveyance is made to and accepted by the said party of the second at his own risk, subject to all outstanding claims, equities, titles, liens, and encumbrances, whether arising by grants, tax, tax-sale, or otherwise.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

STODDARD JUDD,
President of the La C. & M. R. R. Co.

[SEAL.] LEVI BURNELL, *Sec'y.*

Sealed & delivered in presence of—
P. U. JOHNSON.
E. G. RYAN.

599 STATE OF WISCONSIN,
Milwaukee County, ss:

Personally came before me Stoddard Judd, pres't, and Levi Burnell, sec. La Crosse & M. R. R. Co., to me known as such, and acknow foregoing deed as the deed of the La Crosse & Milwaukee Railroad Company, this 8th day of Sept., A. D. 1855.

P. U. JOHNSON,
Notary Public, Ozaukee Co., Wis.

Recorded Sept. 28th, A. D. 1855, at 9 o'clock a. m.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 49 of deeds, pages 90 & 91; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this 4th day of August, 1873.

[SEAL.] F. C. BEST,
Register of Deeds, Mil. Co., Wis.

600 *Charles D. Nash & wife to Moses Kneeland (Q. C. D.).*

This indenture, made the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and fifty-five, between Charles D. Nash, of the city and county of Milwaukee, and Sybil A., his wife, parties of the first part, and Moses Kneeland, of the same place, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of fifteen thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and quitclaimed, and by these presents do remise, release, and quitclaim unto the said party of the second part, and to his heirs and assigns, forever, all those certain lots or parcels of land, situate in the fourth ward of the city of Milwaukee, and known as lots one (1), two (2), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), and fourteen (14), in block one hundred and fifty-five (155); also lots one (1) and four (4), in block one hundred and fifty-six (156); also the one undivided eighth (1/8) part, except lot eight (8), of block one
601 hundred and fifty-seven (157); also the bayou adjoining said last mentioned block, and thence running to the Milwaukee River; also the undivided one-third (1/3) part of lots eight (8), nine (9), sixteen (16), and seventeen (17), in block one hundred and fifty-eight (158); also lots ten (10), twelve (12), thirteen (13), fourteen (14), and the east half of lot fifteen (15), in block one hundred and fifty-eight (158).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and all the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CHARLES D. NASH. [SEAL.]
SYBIL A. NASH. [SEAL.]

Sealed & delivered in the presence of—
H. H. CAMP.
E. S. HAGAR.

602 STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered that on this twenty-sixth day of September, A. D. 1855, before me, a notary public for Wisconsin, residing at the city and county of Milwaukee, personally appeared Charles D. Nash and Sybil A., his wife, severally acknowledged that they executed the within and foregoing deed freely and voluntarily for the uses and purposes therein mentioned, and I further certify that I know the persons who made such acknowledgement to be the individuals described in and who executed said deed.

H. H. CAMP,
Notary Public for Milwaukee County.

Recorded Febr'y 2, A. D. 1856, at 9¾ o'clock a. m.

STATE OF WISCONSIN,
Milwaukee County, ss :

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 50 of deeds, pages 430 & 431; that I have carefully compared the same with said records, and that it is the whole thereof.

603 In testimony whereof I have hereunto set my hand and affixed my official seal, this fourth day of August, 1873.

[SEAL.] F. C. BEST,
Register of Deeds, Mil. Co., Wis.

Moses Kneeland & wife to James Ludington.—Q. C. deed.

This indenture, made the thirty-first day of October, in the year of our Lord one thousand eight hundred and fifty-five, between Moses Kneeland and Ellen C. Kneeland, his wife, of the city and county of Milwaukee, and State of Wisconsin, parties of the first part, and James Ludington, of the same place, party of the second part, witnesseth :

That the said parties of the first part, for and in consideration of the sum of five thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, and quitclaimed, and by these presents do give, grant, bargain, sell, remise, release, and quitclaim unto the said party of the second part, to his heirs and assigns, forever, all of the undivided one-third part of those

604 certain lots or parcels of land, situated in the fourth ward of the city of Milwaukee, and State of Wisconsin, and known as lots one (1), two (2), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), and fourteen (14), in block one hundred and fifty-five (155); also the undivided one-third part of lots one (1) and four (4) in block one hundred and fifty-six (156); also the undivided one-third part of the undivided one-eighth part of block one hundred and fifty-seven (157), except lot eight (8); also the undivided one-third part of the undivided one-eighth part of the bayou adjoining said last-mentioned block, and thence running to the Milwaukee River; also, the undivided one-third part of the undivided one-third part of lots eight (8), nine (9), sixteen (16), and seventeen (17), in block one hundred and fifty-eight (158); also, the undivided one-third part of lots ten (10), twelve (12), thirteen (13), fourteen (14), and the east half of lot fifteen (15), in block one hundred and fifty-eight (158.)

The above described property having been heretofore conveyed, and the deed having been lost before recording, this is intended as a duplicate deed.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise

605 thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MOSES KNEELAND. [SEAL.]
ELLEN C. KNEELAND. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. G. VAN SCHAICK.
FRANCES KNEELAND.

STATE OF WISCONSIN,
County of Milwaukee:

On the twenty-eighth day of April, A. D. 1856, came before me Moses Kneeland and Ellen C. Kneeland, his wife, the above named grantor, and acknowledged the execution of the foregoing deed freely and voluntarily for the uses and purposes therein mentioned.

A. G. VAN SCHAICK,
Notary Public, Mil. Co., Wis.

Recorded Dec'b'r 16, A. D. 1856, at 10 o'clock a. m.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript
606 from the records in my office, as recorded in volume 55 of deeds, on pages 307 & 308; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my had and affixed my official seal this 4th day of August, 1873.

[SEAL.]

F. C. BEST,
Register of Deeds Mil. Co., Wis.

La Crosse & Milwaukee Railroad Co. to C. D. Nash. Q. C. deed.

This indenture, made the fourteenth day of July, in the year of our Lord one thousand eight hundred and fifty-six, between the La Crosse & Milwaukee Railroad Company, by Byron Kilbourn, president, party of the first part, and C. D. Nash, of the city and county of Milwaukee, and State of Wisconsin, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of fifteen thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, and quitclaimed, and by these presents do give, grant, bargain, sell, re-
607 mise, release, and quitclaim unto the said party of the second part, and to his heirs and assigns, forever, all the following described real estate, situated in the county of Milwaukee and State of Wisconsin, known and described as lots nine (9), ten (10), and eleven (11), in block three (3); also lots one (1), two (2), and three (3), in block forty-seven (47), all being situated in the fifth ward of said city of Milwaukee and State aforesaid.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has caused these presents to be signed by their president, and their corporate seal to be hereunto affixed, the day and year first above written.

[SEAL.] LA CROSSE & MILWAUKEE RAILROAD COMPANY,
[SEAL.] By BYRON KILBOURN, *President.*

Signed, sealed & delivered in presence of—
JOHN MCCULLOUGH.
EDWIN H. GOODRICH.

608 STATE OF WISCONSIN,
Milwaukee County ss:

Be it remembered that on this fifteenth day of July, A. D. 1856, the said Byron Kilbourn, president of the La Crosse and Milwaukee Railroad Company, who is to me personally known, appeared before me and acknowledged the foregoing instrument to be free act and deed, for the uses and purposes therein mentioned.

JOHN McCULLOUGH,
Notary Public for said Co.

Recorded July 24, 1856, at 9½ o'clock a. m.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 54 of deeds, on pages 70 & 71; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this fourth day of August, 1873.

[SEAL.] F. C. BEST,
Register of Deeds Mil. Co, Wis.

609 *Moses Kneeland to Edw. H. Goodrich.—Deed.*

This indenture, made the tenth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, between Moses Kneeland, of the city and county of Milwaukee, and State of Wisconsin, party of the first part, and Edwin H. Goodrich, of the same place, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of ten thousand dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, and quitclaimed, and by these presents does give, grant, bargain, sell, remise, release, and quitclaim unto the said party of the second part, to his heirs and assigns, forever, all the undivided one-third part of lots one (1), two (2), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), and fourteen (14), in block one hundred and fifty-five (155); also the undivided one third part of lots one (1) and four (4), in block one hundred and fifty-six (156); also the undivided one-third part of the undivided one-eighth part of block one hundred and fifty-seven (157), except lot eight (8); also the undivided one-third part of the undivided one-eighth part of the bayou
610 adjoining said last mentioned block, and thence running to the Milwaukee River; also the undivided one-third part of the undivided one-third part of lots eight (8), nine (9), sixteen (16), and seventeen (17), in block one hundred and fifty-eight (158); also the undivided one-third part of lots ten (10), twelve (12), fourteen (14), and the east half of lot fifteen (15), in block one hundred and fifty-eight (158), all in the fourth ward of the city of Milwaukee and State aforesaid; also the undivided one-third part of lots nine (9), ten (10), eleven (11), in block three (3); lots one (1), two (2), three (3), in block forty-seven (47), in the fifth ward of the city and State aforesaid.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

MOSES KNEELAND. [SEAL.]

Signed, sealed, & delivered in presence of—
S. S. CHASE.
J. MCCULLOUGH.

611 STATE OF WISCONSIN,
County of Milwaukee:

On the tenth day of April, A. D. 1857, came before me Moses Kneeland, the above-named grantor, and acknowledged the execution of the foregoing deed, freely and voluntarily, for the uses and purposes therein mentioned.

J. MCCULLOUGH,
Notary Public for Mil. Co.

Recorded August 5, 1864, at 10 o'clock a. m.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 84 of deeds, on pages 554 & 555; that I have carefully compared the same with said records and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal, this fourth day of August, 1873.

[SEAL.]

F. C. BEST,
Register of Deeds Mil. Co., Wis.

612 *Edw. H. Goodrich & wife to Ephraim Mariner.—W. deed.*

This indenture, made the eighteenth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, between Edwin H. Goodrich and Mary, his wife, of the city and county of Milwaukee, State of Wisconsin, parties of the first part, and Ephraim Mariner, of the same place, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of , to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm unto said party of the second part, his heirs and assigns, forever, all of the undivided one-third part of lots one (1), two (2), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), and fourteen (14), in block one hundred and fifty-five (155); also the undivided one-third part of lots one (1) and four (4) in block one hundred and fifty-six (156); also the undivided one-twenty-fourth part of block one hundred and fifty-seven (157), except lot eight (8); also the undivided one-twenty-fourth part of

the bayou adjoining said last mentioned block, and thence
613 running to the Milwaukee River; also the undivided one-ninth part of lots eight (8), nine (9), sixteen (16), and seventeen (17), in block one hundred and fifty-eight (158); also the undivided one-third part of lots ten (10), twelve (12), fourteen (14), and the east half of lot fifteen (15), in block one hundred and fifty-eight (158); also the undivided one third part of lot three (3), in block one hundred and fifty-five (155); also the undivided one-third part of lot eight (8), in block one hundred and fifty-seven (157); also the undivided one-third part of lot thirteen (13), in block one hundred and fifty eight (158), all in the fourth ward of the city of Milwaukee and State aforesaid; also the undivided one-third part of lots nine (9), ten (10), and eleven (11), in block three (3), lots one (1), two (2), three (3), in block forty-seven (47), in the fifth ward of the city and State aforesaid.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

614 And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant and agree, to and with the said party of the second part, his heirs and assigns, that they will warrant and defend the aforesaid premises to be free and clear of all claims or claim of all and every person claiming or to claim by, through, or under the said parties of the first part, and none other.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

EDWIN H. GOODRICH. [SEAL.]
MARY S. GOODRICH. [SEAL.]

Signed, sealed and delivered in presence of—
W. P. BOSWORTH.
NATHAN PRATT.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered that on the eighteenth day of November, A. D. 1857, personally came before me the above named Edwin H. Goodrich and Mary, his wife, to me known to be the person' who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

W. P. BOSWORTH,
Notary Public, Mil. Co., Wis.

Recorded Aug. 5th, 1864, at 10 o'clock a. m.

615 STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office as recorded in volume 84 of deeds, on pages 555 and 556; that I have carefully compared the same with said records and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this fourth day of August, 1873.

[SEAL.]

F. C. BEST,
Register of Deeds, Mil. Co., Wis.

Sheriff of Milw. Co. to the Bridgeport Savings Bank. Deed.

This indenture, made the eleventh day of February, in the year one thousand eight hundred and sixty, between Andrew J. Langworthy, sheriff of the county of Milwaukee, of the first part, and the Bridgeport Savings' Bank of the second part:

Whereas, at the regular term of the circuit court, State of Wisconsin, held in and for the county of Milwaukee, at the court-house, in the city of Milwaukee in said county, on the twenty-first day of October, one thousand eight hundred and fifty-nine, it was, among other things,
616 ordered and adjudged by the said court in a certain action then pending in the said court between the Bridgeport Savings' Bank, plaintiff, and the La Crosse & Milwaukee Railroad Company, E. H. Brodhead, William S. Banning, Anson Eldred, Ira E. Goodall, Harvey Birchard, Rufus King, W. J. A. Fuller, Richard K. Swift, Marcus F. Dow, Volney Chapin, George W. Mygatt, Edwin Palmer, William H. Byron, David McDougal, Selah Chamberlain, Newcomb Cleveland, James Wostenholm, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry C. Simonds, Edwin C. Litchfield, John H. Tesch, Joseph Carney, Joshua Hathaway, William Gemmel, Charles Quentin, August Sauthof, Sebre Howard, The Mercantile Bank, Russell Sage, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Lawrence Graham, Donald D. Scott, Avery Hill, A. V. Rudd, Henry L. Palmer, Ephraim Mariner, Thomas Turton, John Sercomb, The City of Milwaukee, Herman Schwarting, treasurer of the city of Milwaukee, J. W. Pixley, Moses Kneeland & James Ludington; that all and singular the mortgaged premises mentioned in the complaint in said action and in said judgment described, or so much thereof as might be sufficient to raise the amount due to the plaintiff for principal, interest and costs in said action,
617 and which might be sold separately without material injury to the parties interested, be sold at public auction according to the course and practice of said court, by or under the direction of the sheriff of the county of Milwaukee that the said sale be made in the county of Milwaukee, where the premises are situate; that the said sheriff give public notice of the time and place of such sale, according to the course and practice of said court, and that any of the parties in said action might become purchaser or purchasers on such sale; that the said sheriff execute to purchaser or purchasers of the said mortgaged premises, or such part or parts thereof as should be so sold, a good and sufficient deed or deeds of conveyance for the same.

And whereas the said sheriff, in pursuance of the said judgment of the said court, did on the eleventh day of February, A. D. 1860, sell at public auction at the post office, in the city of Milwaukee, at the hour of 2 p. m. the premises in the said judgment mentioned, due notice of the time and place of such sale being first given, agreeably to the said judgment, at which sale the premises hereinafter described were struck off to the said party of the second part, for the sum of four thousand nine hundred and three $\frac{1}{100}$ dollars, that being the highest sum bidden for the same:

618 Now this indenture witnesseth: That the said sheriff of the county of Milwaukee, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the judgment of the said court and in conformity to the statute in such case made and provided, and also in consideration of the premises and of the said sum of money so bidden as aforesaid, being

first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey unto the said party of the second part, all those certain pieces or parcels of land, situated in the fourth ward of the city of Milwaukee, and known and described as follows, viz: Lot numbered twelve (12), fourteen (14), and east half of fifteen (15), in block one hundred and fifty-eight (158). Lots four (4), seven (7), and ten (10), in block one hundred and fifty-five (155), and lot one (1) in block one hundred and fifty-six (156).

To have and to hold, all and singular, the premises above mentioned and described, and hereby conveyed, or intended so to be, unto the said party of the second part, its successors and assigns, to its and their only proper use, benefit, and behoof forever.

Witness whereof the said Andrew J. Langworthy, sheriff as aforesaid, hath hereunto set his hand and seal, the day and year first
619 above written.

[SEAL.] A. J. LANGWORTHY,
Sheriff Milwaukee County.

Sealed and delivered in presence of—
H. S. FRISBIE.
JOHN W. DUNLAP.

STATE OF WISCONSIN,
County of Milwaukee, ss:

On the thirteenth day of February, one thousand eight hundred and sixty, before me came Andrew J. Langworthy, known to me to be the individual and officer described in, and who executed the above conveyance, and acknowledged that he executed the same as such for the uses and purposes therein set forth.

H. S. FRISBIE,
Notary Public, Mil. Co., Wis.

Recorded May 19, 1860, at 11¾ o'clock, a. m.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 68 of deeds, pages 617 & 618; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal, this 2nd day of December, 1873.

[SEAL.] F. C. BEST,
Register of Deeds, Mil. Co., Wis.

620 *Bridgeport Savings Bank to Moses Kneeland et al., Q. C. D.*

Know all men by these presents that the Bridgeport Savings Bank, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and located at Bridgeport, in Fairfield County, in said State, by George Sterling, as its treas. and agent, in consideration of four thousand dollars to it in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and quitclaimed, and by these presents does grant, bargain, and sell, and quitclaim unto

Moses Kneeland, James Ludington, and Ephraim Mariner, their heirs and assigns, all the following-described real estate situate in the city and county of Milwaukee, and known and described as follows: Lots four, seven, and ten, in block No. one hundred and fifty-five; lot No. one, in block one hundred and fifty-six; and lots seven, twelve, fourteen, and the east half of lot No. fifteen, in block one hundred and fifty-eight, all in the fourth ward of said city, to have and to hold, to the said Moses Kneeland, James Ludington, Ephraim Mariner, their heirs and assigns, forever, together with all right, title, & interest, claim or demand whatsoever of the said Bridgeport Savings Bank, in law or equity, possession, reversion, or expectancy.

621 And the said Bridgeport Savings Bank does covenant and agree that the above premises *that the said premises* are free and clear from any incumbrances by, through, or under said bank and none other.

In testimony whereof the seal of said bank is hereunto affixed, and this deed is executed by its treasurer and agent, George Sterling, this ninth day of April, 1860, agreeable to a by-law of said corporation and a vote of the board of trustees of said Savings Bank on the 7th day of April, 1860.

[CORPORATE SEAL.] GEORGE STERLING,
Treasurer & Agent of the Bridgeport Savings Bank, as aforesaid.

Signed, sealed, and delivered in presence of—
E. A. MOODY.
GEO. W. WARNER.

STATE OF CONNECTICUT,
Fairfield County, ss:

On this ninth day of April, 1860, personally appeared before me George Sterling, to me known to be the treasurer of the Bridgeport Savings Bank, and the person who subscribed the foregoing conveyance, and acknowledged that he executed the same as treasurer and agent as aforesaid, for and in behalf of said bank, and as its free act and deed.

[SEAL.] GEO. W. WARNER,
Commissioner of Deeds, &c., for the State of Wisconsin, appointed by the Governor of said State.

Recorded May 19, 1860, at 11¾ o'clock a. m.

622 STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 68 of deeds, page 619; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this 2nd day of December, 1873.

[SEAL.] F. C. BEST,
Register of Deeds Mil. Co., Wis.

M. Kneeland, E. Mariner, & Jas. Ludington, to Bridgeport Savings Bank. Mortgage.

This indenture, made the ninth day of April, in the year of our Lord

one thousand eight hundred and sixty, between Moses Kneeland, James Ludington, and Ephraim Mariner, of the city of Milwaukee, of the first part, and the Bridgeport Savings Bank, of Bridgeport, Connecticut, of the second part, witnesseth:

That the said parties of the first part, for and in consideration
623 of the sum of four thousand dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said party of the second part, and to its successors and assigns forever, lots four, seven, and ten, in block No. one hundred and fifty-five; lot No. one, in block No. one hundred and fifty-six, and lots No. twelve, fourteen, and the east half of lot No. fifteen, in block No. one hundred and fifty-eight, all in the fourth ward of the city of Milwaukee (to secure the purchase money for the premises above described), from the parties of the first part to the party of the second part.

To have and to hold the above bargained premises, with the appurtenances, unto the said party of the second part, its successors and assigns forever. Provided, always, and these presents are upon this express condition, that if the said Kneeland, Ludington, and Mariner, the parties of the first part, their heirs, executors, administrators, or assigns, shall well and truly pay or cause to be paid to the said party of the second part, its successors or assigns, the sum of four thousand dollars, with interest at the rate of ten per cent. per annum, according to the condition of a certain bond bearing even date herewith, executed by said Kneeland, Ludington, & Mariner, the said parties of the first
624 to the said party of the second part, as collateral security, then these presents and the said bond shall cease and be null and void.

And the said Kneeland, Ludington, and Mariner do further covenant and agree that they will pay all taxes and assessments of every nature that may be assessed on said premises previous to the day appointed in pursuance of any law of the State for the sale of lands for taxes; and also will pay the sum of fifty dollars as solicitor's fees in case of foreclosure of this mortgage by reason of the non performance of any of the conditions hereof by said parties of the first part, and in case of the non-payment of said sum, or any part thereof, at the time or times above limited for the payment thereof, or in case of the non-payment of any taxes that may be assessed on said premises in manner aforesaid, then, and in either case, it shall or may be lawful for the said party of the second part, its successors or assigns, and the said parties of the first part do hereby covenant and agree, and by these presents empower and authorize the said party of the second part, its successors or assigns, to grant, bargain, sell, release and convey the said premises, with the appurtenances thereunto belonging, at public auction or vendue; and on such sale to make and execute to the purchaser or purchasers, his, her,
625 or their heirs and assigns, forever, good, ample, and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided; and that out of the moneys arising from such sale, to retain the principal and interest which shall then be due on the said bond, together with the costs and charges, and the said sum of fifty dollars, solicitor's fees as aforesaid; rendering the surplus moneys, if any there be, to the said parties of the first part, their heirs, executors, administrators or assigns, after deducting the costs of such vendue as aforesaid.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MOSES KNEELAND. [SEAL.]
JAMES LUDINGTON. [SEAL.]
EPHRAIM MARINER. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. TROWBRIDGE.
G. O. CHAPMAN.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered that on the first day of May, A. D. 1860, personally came before me the above-named Moses Kneeland, James Ludington, and Ephraim Mariner, to me known to be the persons who executed the foregoing mortgage, and acknowledged the execution thereof to be
626 their free act and deed for the uses and purposes therein mentioned.

A. TROWBRIDGE,
Notary Public, Milwaukee Co., Wis.

Received for record at 8 o'clock a. m., May 19th, 1860.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 51 of mortgages, page 257; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this eighth day of May, 1875.

[SEAL.]

F. C. BEST,
Register of Deeds, Mil. Co., Wis.

Warranty deed. E. Mariner & L. W., his wife, to Russell Sage.

This indenture, made the first day of July, in the year of our Lord one thousand eight hundred and sixty-four, between Ephraim Mariner and Lucinda W., his wife, of the city and county of Milwaukee, of the first part, and Russell Sage, of the State of New York,
627 of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of eighteen thousand dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey and confirm unto the said party of the second part, his heirs and assigns, forever, one-third undivided of blocks one hundred and fifty-five and one hundred and fifty-six, and of lot eight in block one hundred and fifty-seven; one-twenty-fourth part of that part of block one hundred and fifty-seven, except lot eight, bounded north by Point street, northwestwardly by Peters street, west by Union street, south by the south line of the block, and east by Water street; one-third undivided of lots ten, twelve, thirteen and fourteen, and of the east half of lot fifteen, in block one hundred and fifty-eight;

one-ninth of lots eight and nine, sixteen and seventeen, in said block one hundred and fifty-eight, all in the fourth ward of the city of Milwaukee; together with one-third of lots one, two and three, in block forty-seven, in Walker's Point, in the fifth ward of said
628 city of Milwaukee.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; and all the estate, right, title, interest, claim or demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in and to the above-bargained premises, and their hereditaments and appurtenances.

To have and to hold said premises, as above described, with the hereditaments and appurtenances, unto the said party of the second part. and to his heirs, and assigns, forever.

And the said Ephraim Mariner, for himself, his heirs, executors and administrators, do covenant, grant, bargain and agree to and with said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above described as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law, in fee-simple, and that the same are free and clear from all incumbrances whatever, and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons, lawfully claiming the whole or any part thereof, he will forever warrant and defend.

629 In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

EPHRAIM MARINER. [SEAL.]
LUCINDA W. MARINER. [SEAL.]

Sealed & delivered in presence of—
THERESA O'BRIEN.
T. B. ELLIOTT.

STATE OF WISCONSIN,
County of Milwaukee:

Be it remembered that on the thirtieth day of July personally came before me the above-named Ephraim Mariner and Lucinda W., his wife, to me known to be the persons who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

THEODORE B. ELLIOTT,
Notary Public, Mil. Co., Wis.

Received for record at 10½ o'clock a. m., January 21st, 1865.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 85 of deeds, page
630 468; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this fourth day of August, 1873.

[SEAL.]

F. C. BEST,
Register of Deeds Mil. Co., Wis.

Moses B. Kneeland, by guardian, to Edwin H. Goodrich.—Deed.

This indenture, made this second day of July, in the year eighteen hundred and sixty-four, between James Kneeland, guardian of Moses Burr Kneeland, an infant under the age of twenty-one years, party of the first part, and Edwin H. Goodrich, of the city of Milwaukee, party of the second part:

Whereas a petition was heretofore presented to the circuit court of the county of Milwaukee on behalf of the above-named infant, praying for a sale of his right, title, and estate in the several premises therein mentioned and described, and of which the hereinafter described premises are part and parcel, upon which petition an order of the said court was made, bearing date on the eleventh day of June, A. D. 1864, appointing James Kneeland above named the special guardian of such infant
631 for the purposes of the said petition; and whereas such proceedings were afterwards had upon such petition that the said circuit court on the second day of July, A. D. 1864, among other things, in substance ordered and adjudged that the above-named James Kneeland, the special guardian of such infant, be authorized and empowered to sell the several premises therein mentioned, and all the estate, right, title, and interest of the above-named infant therein and thereto, and that such sale, with the name of the purchaser and the terms thereof, be reported, upon the oath of such guardian, to the said court.

And whereas the said James Kneeland, special guardian as aforesaid, under and by virtue of the said authority, did, on the second day of July, A. D. 1864, enter into an agreement with the said Edwin H. Goodrich, party of the second part hereto, for the sale of the premises hereinafter described, being part and parcel of the premises described in the said petition and in the said order, for the sum of four thousand five hundred dollars in cash; and thereupon the said guardian made a report of such agreement for a sale of such premises to the said court under oath pursuant to the requisitions of such last-recited order, upon which an order was made bearing date the second day of July,
632 A. D. 1864, confirming such report, and approving and confirming such sale, and directing the same to be carried into effect.

Now, therefore, this indenture witnesseth that the said Moses Burr Kneeland, by James Kneeland, his special guardian as aforesaid, for and in consideration of the sum of four thousand and five hundred dollars to him in hand paid, the receipt whereof is hereby acknowledged, doth grant, bargain, sell, remise, release, and convey unto the said party of the second part, his heirs and assigns, all the following-described premises, situate in the city of Milwaukee and State of Wisconsin, to wit: An equal undivided one-thirty-sixth of lots eight (8), nine (9), sixteen (16), and seventeen (17) in block one hundred and fifty-eight (158), an equal undivided one-twelfth of block one hundred and fifty-five (155), an equal and undivided one-twelfth of block one hundred and fifty-six (156), an undivided one-twelfth of lot eight (8), and an undivided one ninety-sixth of lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), nine (9), ten (10), and eleven (11) in block one hundred and fifty-seven (157), including the proportionate interest in what was formerly a bayou, being easterly of the said block and between the said

block and West Water or Reed street, not, however, conveying any portion of said bayou lying east of said street; also an undivided
633 one-twelfth of lots ten (10), twelve (12), thirteen (13), fourteen (14), and of the southeasterly half of lot fifteen (15) in block one hundred and fifty-eight, all in the fourth ward of the said city; also an undivided one-twelfth of lots one (1), two (2), and three (3), in block forty-seven (47), in the fifth ward of the said city; and all the right, title, and interest, property, possession, and claim of him, the said Moses Burr Kneeland, infant as aforesaid, of, in, and to the same, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their only proper use, benefit and behoof forever.

In testimony whereof the said James Kneeland, special guardian as aforesaid, has executed these presents for, and as the act and deed of, the said infant.

MOSES BURR KNEELAND, [SEAL.]
By JAMES KNEELAND,
Special Guardian.

In presence of—
DAVID B. OGDEN.
JAMES S. BROWN.

[5 $1 stamps.]

STATE OF WISCONSIN,
Milwaukee County, ss:

On this 28th day of July, A. D. 1864, personally came before me James Kneeland, to me known, and acknowledged that as special guardian of Moses Burr Kneeland, an infant, he executed the forego-
634 ing conveyance as the free act and deed of the said infant.

DAVID B. OGDEN,
Not. Pub., resid. in Mil. Co.

Recorded February 11, 1865, at 1½ o'clock p. m.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 87 of deeds, on pages 367 & 368; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this fourth day of August, 1873.

[SEAL.]
F. C. BEST,
Register of Deeds, Mil. Co., Wis.

Edwin H. Goodrich & M. H., h. w., to Russell Sage. Q. C. D.

This indenture, made the second day of July, in the year of our Lord one thousand eight hundred and sixty-four, between Edwin H. Goodrich, of the city of Milwaukee, State of Wisconsin, and Mary S. Goodrich, his wife, parties of the first part, and Russell Sage, of the city of
635 New York, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration

of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, and quitclaimed, and by these presents do give, grant, bargain, sell, remise, release, and quitclaim unto the said party of the second part, to his heirs and assigns, forever, all the following-described premises, situate in the city of Milwaukee and State of Wisconsin, to wit: An equal undivided one-thirty-sixth of lots eight (8), nine (9), sixteen (16), and seventeen (17), in block one hundred and fifty-eight (158); an equal undivided one-twelfth of block one hundred and fifty-five (155); an equal and undivided one-twelfth of block one hundred and fifty-six (156); an undivided one-twelfth of lot eighth (8), and an undivided one-ninety-sixth of lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), nine (9), ten, and eleven (11), in block one hundred and fifty-seven (157), including the proportionate interest in what was formerly a bayou lying easterly of the said block, and between the said block and West Water or Reed street, not, however, conveying any portion of said bayou lying east of said street; also an undivided one-twelfth of lots ten (10),
636 twelve (12), thirteen (13), fourteen (14), and of the southeasterly half of lot fifteen, in block one hundred and fifty-eight (158), all in the fourth ward of said *said* city; also an undivided one-twelfth of lots one (1), two (2), and three (3), in block forty-seven (47), in the fifth ward of said city; also all of lot eleven (11), in block one hundred and fifty-five (155), in the fourth ward of said city.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

EDWIN H. GOODRICH. [SEAL.]
MARY S. GOODRICH. [SEAL.]

Signed, sealed, & delivered in presence of—
HARRY R. HATMAKER.
W. L. HINSDALE.

STATE OF WISCONSIN,
County of Milwaukee:

On the seventeenth day of August, A. D. 1864, came before me Edwin H. Goodrich and Mary S. Goodrich, the above named grantors,
637 and acknowledged the execution of the foregoing deed, freely and voluntarily, for the uses and purposes therein mentioned.

W. L. HINSDALE,
Notary Public, Mil. Co., Wis.

Recorded February 11th, 1865, at 1½ o'clock p. m.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 87 of deeds, on page 369; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this fourth day of August, 1873.

[SEAL.]

F. C. BEST,
Register of Deeds, Mil. Co., Wis.

Warranty deed. James Ludington to Russell Sage.

This indenture, made the first day of August, in the year of our Lord one thousand eight hundred and sixty-four, between James
638 Ludington, of the city of Milwaukee, State of Wisconsin, party of the first part, and Russell Sage, of the city of New York, in the State of New York, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of sixteen thousand five hundred dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, remise, release, alien, convey, and confirm unto the said party of the second part, his heirs and assigns, forever, all those certain pieces, parcels, or lots of land, situate in the city of Milwaukee, State of Wisconsin, described as follows: An undivided one-ninth ($\frac{1}{9}$) of lots (8), nine (9), sixteen (16), and seventeen (17), in block one hundred and fifty-eight (158); an undivided one-third of block one hundred and fifty-five, of block one hundred and fifty-six; of lots ten (10), twelve (12), thirteen (13), fourteen (14), and of southeasterly half of lot fifteen (15), in block one hundred and fifty-eight (158); and of lot eight in block one hundred and fifty-seven (157); and an undivided one-twenty-fourth part of that portion of the bayou and of block one hundred and fifty-seven, lying west of West Water or Reed streets, in the fourth
639 ward of said city; and an undivided one-third of lots one, two, and three (1, 2, & 3), in block forty-seven (47), in the fifth ward of said city of Milwaukee; together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above-bargained premises, and their hereditaments and appurtenances.

To have and to hold said premises, as above described, with the hereditaments and appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

And the said party of the first part, for himself, and his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all incumbrances whatever; and that the above bargained premises in the quiet and peaceful possession of the said party of the second part, his heirs and assigns, against all and every
640 person or persons lawfully claiming the whole or any part thereof, he will forever warrant and defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES LUDINGTON. [SEAL.]

Sealed & delivered in presence of—
THEODORE B. ELLIOTT.
E. MARINER.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered that on the 11th day of February, A. D. 1865, personally came before me the above-named James Ludington, to me known to be the person who executed the said deed, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

THEODORE B. ELLIOTT,
Notary Public, Mil. Co., Wis.

Received for record at 1½ o'clock p. m. February 11, 1865.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office, as recorded in volume 85 of deeds, on
641 page 507; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this fifth day of August, 1873.

[SEAL.]

F. C. BEST,
Register of Deeds, Mil. Co., Wis.

R. Sage & wife to M. & St. Paul R. R. Co.—Q. C. D.

This indenture, made the third day of August, in the year of our Lord one thousand eight hundred and sixty-four, between Russell Sage and Maria Sage, his wife, of the city of New York, in the State of New York, parties of the first part, and the Milwaukee & St. Paul Railway Co., party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, and quit-claimed, and by these presents do give, grant, bargain, sell, remise, release, and quit-claim unto the said party of the second part, to its successors and assigns forever, the following lots and blocks
642 of land, situate in the fifth ward of the city of Milwaukee, in the county of Milwaukee and State of Wisconsin, to wit: the north half of lot nine (9) and lot ten (10), in block eleven (11); lots one (1), two (2), seven (7), eight (8), nine (9), and ten (10), in block twelve (12); lot one (1), in block thirteen (13); all of blocks thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), and forty-six (46); also lots one (1), two (2), three (3), eight (8), nine (9), eleven (11), and twelve (12), in block forty-seven (47); also all of blocks forty-eight (48), forty-nine (49), fifty (50), fifty-one (51), and fifty-two (52); also the following lots and blocks of land situate in the fourth ward of said city of Milwaukee; all of blocks one hundred and fifty-five (155) and one hundred and fifty-six (156); also lots eight (8), nine (9), ten (10), twelve (12), thirteen (13), fourteen (14), the east half of fifteen, and lots sixteen (16) and seventeen (17), in block one hundred and fifty-eight (158); lot eight (8), in block one hundred and fifty-seven (157); also all that part of block one hundred and fifty-seven (including the bayou) bounded northerly by Point street, northwestwardly by Peter street, west by

Union street, south by the south line of said block, and east by Water street; also lot six (6) and lot seven (7), in block one hundred
643 and fifty-eight (158), lying west of West Water street; lot eleven (11) and northwest half of lot fifteen (15), in said block, in the fourth ward; and lots four (4), five (5), six (6), and ten (10), in block forty-seven (47), in the fifth ward of said city.

To have and hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, its successors and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above witten.

RUSSELL SAGE. [SEAL.]
MARIA SAGE. [SEAL.]

Signed, sealed, & delivered in presence of—
SARAH A. SAGE.
CHARLES NETTLETON.

STATE OF NEW YORK,
City & County of New York, ss:

Be it remembered that on the ninth day of August, A. D. 1864, came before me Russell Sage and Maria Sage, his wife, the above-named grantors, and acknowledged the execution of the foregoing deed,
644 freely and voluntarily, for the uses and purposes therein mentioned; and I further certify that the said Russell Sage and Maria, his wife, are known to me to be the individuals described in and who executed the foregoing instrument.

In witness whereof I have hereunto set my hand and affixed my official seal, on this 9th day of August, A. D. 1864.

[SEAL.] CHARLES NETTLETON,
Commissioner for Wisconsin in New York.

Recorded June 21st, 1865, at 4½ o'clock p. m.

STATE OF WISCONSIN,
Milwaukee County, ss.

I, Frederick Charles Best, register of deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records in my office as recorded in volume 88 of deeds, on pages 210 & 211; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this fifth day of August, 1873.

[SEAL.] F. C. BEST,
Register of Deeds, Mil. Co., Wis.

645 Pleas before the honorable Arthur MacArthur, judge of the second judicial circuit of the State of Wisconsin, and presiding judge of the circuit court within and for the county of Milwaukee, in said State, at a term of said court begun and holden at the court-house in the city of Milwaukee, on the third Monday of September, A. D. 1858.

Herman L. Page, esq., sheriff; Matthew Keenan, clerk.

THE BRIDGEPORT SAVINGS BANK
against
THE LA CROSSE AND MILWAUKEE RAILROAD Company, E. H. Brodhead, William S. Banning, and others.

Be it remembered that heretofore, to wit, on the 15th day of December, 1858, came the said plaintiff by its attorneys and files in the office of the clerk of the court aforesaid its certain summons and complaint in the words and figures following, to wit:

Circuit court Milwaukee County.

THE BRIDGEPORT SAVINGS BANK
against
THE LA CROSSE AND MILWAUKEE RAILROAD Company, E. H. Brodhead, William S. Banning, Anson Eldred, Ira E. Goodall, Harvey Berchard, Rufus King, W. J. A. Fuller, Richard K. Swift, Marcus F. Dow, Volney Chapin, George W. Mygatt, Edwin Palmer,
646 William H. Byron, David McDougall, Selah Chamberlain, Newcomb Cleveland, James Wostonholme, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Edwin C. Litchfield, John H. Tesch, Joseph Carney, Joshua Hathaway, William Gemmel, Charles Quentin, August Lauthoff, Sebre Howard, the Mercantile Bank, Russell Sage, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Phillip S. Justice, Elkanah Cobb, John V. Bean, Phillip Wilson, J. Howard Mitchell, Lawrence Graham, Donald D. Scott, Avery Hill, A. V. Rudd, Henry L. Palmer, Ephraim Mariner, Thomas Turton, John Sercomb, The city of Milwaukee, Herman Schwarting, treasurer of the city of Milwaukee, J. W. Pixley, and Moses Kneeland & James Ludington.

The State of Wisconsin to each and all of the defendants above named:

SIRS: You are hereby summoned and required to answer the complaint in this action of which a copy is herewith served upon you, and to serve a copy of your answer on us at our office, Nos. 6 and 8 Albany building, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint as aforesaid the plaintiff will apply to the court for the relief demanded in the complaint.

Dated Milwaukee, December 13, 1858.

647 FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

Circuit court Milwaukee County.

THE BRIDGEPORT SAVINGS BANK
against
THE LA CROSSE AND MILWAUKEE RAILROAD Company, E. H. Brodhead, William S. Banning, Anson Eldred, Ira E. Goodall, Harvey Birchard, Rufus King, W. J. A. Fuller, Richard K. Swift, Marcus F. Dow, Volney Chapin, George W. Mygatt, Edwin Palmer, William H. Byron, David McDougall, Selah Chamberlain, Newcomb Cleveland, James Wostonholme, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Edwin C. Litchfield, John H. Tesch, Joseph Carney, Joshua Hathaway, William Gemmell, Charles Quentin, August Lauthof, Sebre Howard, The Mercantile Bank, Russell Sage, Edwin Townsend, Franklin J. Blair, Edwin R. Persons, Phillip S. Justice, Elkanah Cobb, John V. Bean, Phillip Wilson, J. Howard Mitchell, Lawrence Graham, Donald D. Scott, Avery Hill, A. V. Rudd, Henry L. Palmer, Ephraim Mariner, Thomas Turton, John Sercomb, The city of Milwaukee, Herman Schwarting, treasurer of the city of Milwaukee, J. W. Pixley, and Moses Kneeland, James Ludington.

The above named plaintiff respectfully *to* shows to this court that it is a corporation created by virtue of the laws of Connecticut, and is
648 doing business in Bridgeport in said State under the name of the Bridgeport Savings Bank.

And the said plaintiff further shows to this court and alleges upon information and belief that the Milwaukee, Fond du Lac and Green Bay Railroad Company, a corporation created by virtue of the laws of the State of Wisconsin, for the purpose of securing the payment to Edward D. Holton of the sum of four thousand dollars, with interest thereon, on or about the twenty-seventh day of August, one thousand eight hundred and fifty-three, executed and delivered to said Edward D. Holton its promissory note in writing, signed by James Kneeland as president, and I. N. Mason as secretary, and having the seal of said company affixed, wherein and whereby it promised to pay to said Edward D. Holton or bearer, in five years after date thereof, the sum of four thousand dollars, with interest thereon at and after the rate of eight per cent. per annum, payable semi-annually, both principal and interest, payable at the Farmers' and Millers' Bank in the city of Milwaukee; as collateral security for the payment of the said indebtedness, the said Milwaukee, Fond du Lac and Green Bay Railroad Company on the same day executed, duly acknowledged, and delivered to the said Edward D. Holton a mortgage, which mortgage was signed by James Kneeland as president, and I. N. Mason as secretary, and the seal of said company affixed thereto, whereby it granted, bargained, and sold to the said Edward D. Holton
649 the following described premises, with the appurtenance, that is to say: all those certain pieces or parcels of land situated in the fourth ward of the city of Milwaukee, and known and described as follows, viz: lots numbered twelve (12), fourteen (14), and east half of fif-

teen (15), in block one hundred and fifty-eight (158); lots four (4), seven (7), and ten (10), in block one hundred and fifty-five (155;) and lot one (1), in block one hundred and fifty-six (156).

And the said mortgage was also upon the condition that if the said Milwaukee, Fond du Lac and Green Bay Railroad Company, its successors or assigns, should well and truly pay, or cause to be paid, to the said Edward D. Holton, his heirs, executors, administrators, or assigns, the sum of four thousand dollars, with interest, according to the condition of a certain promissory note executed by the said Milwaukee, Fond du Lac and Green Bay Railroad Company to the said Edward D. Holton, and hereinbefore particularly described, then the said mortgage and the said note should cease and be null and void; and in case of the non payment of the said sum, or any part thereof, at the time or times limited for the payment thereof, the said Edward D. Holton, his heirs, executors, administrators, or assigns, were empowered to sell the said mortgaged premises at public auction or vendue, and to make and execute to the purchaser or purchasers thereof good, ample, and sufficient deeds of conveyance in the law pursuant to the statute in such
650 case made and provided; and out of the moneys arising from such sale, to retain the principal and interest which shall then be due on the said note and mortgage, together with the costs and charges of such sale, and the sum of twenty-five dollars solicitor's fees; the surplus, if any, to be returned to the said Milwaukee, Fond du Lac and Green Bay Railroad Company, its successors or assigns.

And the said plaintiff further shows that the said mortgage was duly recorded in the office of the register of deeds in the county of Milwaukee on the twenty-seventh day of August, A. D. 1853, in liber 22 of mortgages, pages 480, 481, and 482.

And the said plaintiff further shows to this court that the said Edward D. Holton did, on or about the twenty-eighth day of August, 1856, sell and assign the said note and mortgage and the debt secured thereby to this plaintiff for a valuable consideration, and this plaintiff is now the lawful owner and holder of the same.

And this plaintiff further shows to the court upon like information and belief that by an act of the legislature of the State of Wisconsin entitled "An act to amend an act entitled 'An act to incorporate the La Crosse and Milwaukee Railroad Company,' approved April 2, 1852," approved March 9, 1854, the said La Crosse and Milwaukee Railroad Company, upon such terms as has been or may be agreed upon by and between the boards of directors of the said companies, and the
651 corporate name of said La Crosse and Milwaukee Railroad Company shall continue and be the corporate name of said company after consolidation with said Milwaukee, Fond du Lac and Green Bay Railroad Company.

And it was further enacted that upon such consolidations being made all the rights and privileges, grants, franchises, and immunities conferred by the charters of the respective companies and the acts amendatory thereto, were merged in and conferred upon said consolidated company, and all the property and estate, real, personal, and mixed, the lands and tenements, the rights, credits, and effects of each of said companies so consolidated should become and be the property of such consolidated company under the corporate name aforesaid.

And it was further enacted that such consolidated company should have the same right, power, and authority, in the corporate name aforesaid, to demand and receive, sue for and recover, use, occupy, possess, and enjoy, give, grant, bargain, and sell, assign, release, and convey

any and all such real estate, property and effects of each of said companies so consolidated as either of said companies had or might have had before such act of consolidation.

And the plaintiff further shows, upon like information and belief, that the said Milwaukee, Fond du Lac and Green Bay Railroad Company and the La Crosse and Milwaukee Railroad Company were consolidated under the name of the La Crosse and Milwaukee Railroad Company by the boards of directors of said companies, under and by virtue of said act of legislature, and that the said property thereupon became and was the property of said La Crosse and Milwaukee Railroad Company.

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And the said plaintiff further shows to this court that the said defendant, The La Crosse and Milwaukee Railroad Company, has failed to comply with the condition of the said note and mortgage by omitting to pay the amount of the principal and interest which became due and payable on the twenty-seventh day of August, A. D. 1858, and there is now justly due to the plaintiff upon said note and mortgage the sum of four thousand dollars with interest at the rate of eight per cent. per annum from the twenty-seventh day of August, 1857.

And said plaintiff further shows, upon information and belief, and alleges the truth to be, that said defendants, The City of Milwaukee and Herman Schwarting, treasurer as aforesaid, have now in their possession and under their control, tax and street commissioner's certificates which have been issued against the lots or premises above described, or a part thereof, for the years 1850, 1851, 1852, 1855 and 1856 (a particular description of which tax and street commissioner's certificates this plaintiff is unable to give), but which amount in the aggregate to a large sum, to wit, the sum of about one thousand five hundred dollars; that the said defendant, The City of Milwaukee and Herman Schwarting, treasurer, hold said tax and street commissioner's certificates.

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And this plaintiff claims and insists that said tax or commissioner's certificates as aforesaid were issued without authority of law and are null and void.

And said plaintiff further shows to this court that said tax and street commissioner's certificates so held by said city of Milwaukee and Herman Schwarting, treasurer as aforesaid, being outstanding, not cancelled, are an apparent cloud upon the title, or lien upon the above described mortgaged premises, and ought in fact to be delivered up and cancelled.

And plaintiff further shows to this court that it is fearful said defendants, The City of Milwaukee and Herman Schwarting, treasurer, will part with or dispose of said tax or street commissioner's certificate to some third party or parties, in order to render the same a lien upon the above-described mortgaged premises, or to vex or harass this plaintiff.

And the said plaintiff further shows to this court that no proceedings have been had at law or otherwise, for the recovery of the said sum secured by said note and mortgage, or any part thereof.

And the said plaintiff further shows to this court and alleges upon information and belief that E. H. Brodhead, William S. Banning, Anson Eldred, Ira E. Goodall, Harvey Birchard, Rufus King, W. J. A. Fuller, Richard K. Swift, Marcus F. Dow, Volney Chapin, George W. Mygatt, Edwin Palmer, William H. Byron, David McDougal, Selah Chamberlain, Newcomb Cleveland, James Wostonholme, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Edwin C. Litchfield, John H. Tesch, Joseph Carney, Joshua

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Hathaway, William Gemmell, Charles Quentin, August Lauthof, Sebre Howard, The Mercantile Bank, Russell Sage, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Phillip S. Justice, Elkanah Cobb, John V. Bean, Phillip Wilson, J. Howard Mitchell, Lawrence Graham, Donald D. Scott, Avery Hill, A. V. Rudd, Henry L. Palmer, Ephraim Mariner, Thomas Turton, John Sercomb, The City of Milwaukee, Herman Schwarting, treasurer of the City of Milwaukee, J. W. Pixley, and Moses Kneeland & James Ludington, have, or claim to have, some interest in or lien upon the said mortgaged premises, or some part thereof, which interest or lien, if any, has accrued subsequently to the lien of said mortgage.

The plaintiff therefore prays for the judgment of this court that the defendants, and all persons claiming under them subsequent to the commencement of this action, may be barred and foreclosed of all right, claim, lien, and equity of redemption in the said mortgaged premises; that the said premises may be decreed to be sold according to law; that the moneys arising from such sale may be brought into court; that plaintiff may be paid the amount due on the said note and mortgage with interest at the rate of eight per cent. per annum until paid
655 to the time of such payment, and the costs and expenses of this action, together with the sum of twenty-five dollars, solicitor's fee, as mentioned in said mortgage, so far as the amount of such moneys properly applicable thereto will pay of the same, and that the defendant, The La Crosse and Milwaukee Railroad Company, may be adjudged to pay any deficiency which may remain after applying all of said moneys so applicable thereto, and that an injunction may be issued by this honorable court, directed to said defendants, The City of Milwaukee, and Herman Schwarting, treasurer, enjoining and restraining them, and each of them, from parting with or disposing of said tax and street commissioners' certificates, or other evidence of tax against the premises above described now held by them or either of them, or under their control, until the further order of the court; and that the said defendants, The City of Milwaukee and Herman Schwarting, treasurer as aforesaid, may be directed to bring into court and deliver up, for the purpose of being cancelled at the trial of this cause, said tax and street commissioners' certificates, held by them, as aforesaid, against the above described premises, and that the plaintiff may have such other or further relief, or both, in the premises, as shall be just and equitable.

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

STATE OF WISCONSIN,
Milwaukee County, ss:

656 Benjamin K. Miller, one of the attorneys for the plaintiff in this action, being duly sworn, says that he has read the foregoing complaint and knows the contents of the same, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true; that said note and mortgage are written instruments for the payment of money only, and are in his possession; that his knowledge is derived from an examination thereof, and the same are the grounds of his belief; and that he makes this affidavit because the said plaintiff is a corporation and is not doing business in said State of Wisconsin, and its officers are not within the said State of Wisconsin.

B. K. MILLER.

Subscribed and sworn to before me this 13th day of December, A. D. 1858.

SAMUEL DALE, JR.,
Notary Public, Milwaukee County, Wis.

Afterwards, to wit, December 28, 1858. Order to show cause, with affidavit of service annexed, filed as follows:

On reading the plaintiff's complaint in the above-entitled cause, & on motion of Finches, Lynde & Miller, attorneys for said plaintiff, it is ordered that The City of Milwaukee and Herman Schwarting, treasurer of the city of Milwaukee, show cause on the fourth Monday of December inst., at the opening of the circuit court of Milwaukee County,
657 or as soon thereafter as counsel can be heard, why an injunction should not be issued according to the prayer of said complaint.

And it is further ordered that the said city of Milwaukee and Herman Schwarting, treasurer of said city of Milwaukee, and their officers and agents, are hereby enjoined and restrained from disposing of or interfering with any and all tax or street commissioners' certificates which have been issued for the years 1850, 1851, 1852, & 1856 against the following-described lots or any part thereof, viz: All those certain pieces or parcels of land situated in the fourth ward of the city of Milwaukee and known and described as lots numbered twelve (12), fourteen (14), and east half of fifteen (15) in block one hundred & fifty-eight (158); lots four (4), seven (7), and ten (10) in block one hundred and fifty-five (155); and lot one (1) in block one hundred and fifty-six (156), or otherwise interfering with the same until the further order of the court.

R. N. AUSTIN,
Court Commissioner.

STATE OF WISCONSIN,
Milwaukee County, ss:

Samuel Dale, jr., being duly sworn, deposes & says that he did, on the 27th day of December, 1858, serve the annexed order to show cause & injunction on William A. Prentice, mayor of the city of Milwaukee, by delivering a copy of the same to him personally, and leaving the same with him, at the city of Milwaukee.

And deponent further says that he did, on the 20th day of December, 1858, serve the annexed order to show cause & injunction
658 on the said defendant, Herman Schwarting, treasurer of the city of Milwaukee, by delivering a copy of the same to him personally, and leaving the same with him at the city of Milwaukee; and further deponent saith not.

SAMUEL DALE, JR.

Subscribed & sworn to before me this 27th day of December, 1858.

EDGAR W. DENNIS,
Notary Public of said Co.

Afterwards, to wit, January 17, 1859, copy summons and complaint filed, with notice of object of action and affidavits of service and admissions of service thereof, as follows:

State of Wisconsin to E. H. Brodhead, William S. Banning, Anson Eldred, Ira E. Goodall, Harvey Birchard, Rufus King, W. J. A. Fuller, Richard K. Swift, Marcus F. Dow, Volney Chapin, George W. Mygatt, Edwin Palmer, William H. Byron, David McDougall, Selah Chamberlain, Newcomb Cleveland, James Wostenholme, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Edwin C. Litchfield, John H. Tesch, Joseph Carney, Joshua Hathaway, William Gemmell, Charles Quentin, August Lauthof, Sebre Howard, The Mercantile Bank, Russell Sage, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Phillip S. Justice, Elkanah Cobb, John V. Bean, Phillip Wilson, J. Howard Mitchell, Lawrence Graham, Donald D. Scott, Avery Hill, A. V. Rudd, Henry L. Palmer, Ephraim Mar-
659 iner, Thomas Turton, John Sercomb, The City of Milwaukee, Herman Schwarting, treasurer of the city of Milwaukee; J. W. Pixley, Moses Kneeland, & James Ludington.

SIRS: The object of the above action in which a summons is herewith served upon you is to foreclose a mortgage executed by the Milwaukee, Fond du Luc and Green Bay Railroad Company to Edward D. Holton, on the twenty-seventh day of August, one thousand eight hundred and fifty-three, for the sum of four thousand dollars, with interest thereon from the 27 day of August, A. D. 1857, and no personal claim is made against any of said defendants, except the defendant The La Crosse and Milwaukee Railroad Company, and the following is a description of the said mortgaged premises, to wit: All those certain pieces or parcels of land situate in the fourth ward of the city of Milwaukee, and known and described as follows, viz: Lots numbered twelve (12), fourteen (14) and east half of fifteen (15) in block one hundred and fifty-eight (158); lots four (4), seven (7) and ten (10) in block one hundred and fifty-five (155), and lot one (1) in block one hundred and fifty-six (156.)

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

STATE OF WISCONSIN,
County of Milwaukee, ss:

T. B. Elliott, of the city of Milwaukee, being duly sworn, deposes and says that he did, on the twenty-seventh day of December, one thousand eight hundred and fifty-eight, serve Moses Kneeland, one of the
660 defendants in the above entitled action, with a summons and complaint, and a notice of object of action of which the annexed is a copy, by delivering the same to him personally, and informing him of the contents thereof, and also that he served summons and complaint and notice of object of action upon the La Crosse and Milwaukee Railroad Company, defendant, by delivering the same to Edward P. Whaling, secretary of said railroad company, and informing him of the contents thereof.

T. B. ELLIOTT.

Subscribed and sworn to before me this 30th day of Dec., 1858.
SAMUEL DALE, JR.
Notary Public, Mil. Co., Wis.

STATE OF WISCONSIN,
Milwaukee County, ss:

Samuel Dale, jr., being duly sworn, deposes & says that he did, on the 27th day of December, 1858, serve the annexed summons & complaint & notice of object of action on William A. Prentiss, mayor of the city of Milwaukee, by delivering a true copy of the same to him person-

ally and leaving the same with him at the city of Milwaukee; and deponent further says that he did, on the 20th day of December, 1858, serve the annexed summons & complaint & notice of object of action on the said defendant, Herman Schwarting, treasurer of the city of Milwaukee, by delivering a true copy of the same to him personally and leaving the same with him at the city of Milwaukee; and further deponent saith not.

SAMUEL DALE, JR.

Subscribed & sworn to before me, this 27th day of December, 1858.

E. W. DENNIS,
Notary Public, Mil. Co.

661 We hereby accept service of a copy of the within summons, complaint & notice of object of action, & hereby enter our appearance & waive notice of application to the court for judgment.
December 16, 1858.

SMITH & SALOMON,
Att'ys for Ch's Quentin, N. Cleveland.
OGDEN, BROWN & OGDEN,
Att'ys for Def'ts J. Hathaway, William Gemmell & Marcus F. Dow, H. L. Palmer.
PALMER & STARK,
Att'ys for Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Lawrence Graham, Donald D. Scott, but not waiving notice of application to the court for judg
BUTLER, BUTTRICK & COTTRILL,
Att'ys Ebenezer, Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Edwin C. Litchfield, John H. Tesch. & Edw'a H. Brodhead.
DOWNER, LA DUE & JENKINS,
Att'ys for Thomas Turton & John Sercomb.
MARINER & PRATT,
Att'ys for Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, E. Mariner.
LEVI HUBBELL,
Att'y for Sebre Howard, Avery Hill, A. V. Rudd & Russell Sage.
WELLS & BRIGHAM,
Att'ys for Mercantile Bank.
UPHAM & GRAHAM,
Att'ys for Joseph Carney.

Same day, to wit, January 17, 1859. affidvait for order of publication and order of publication filed, as follows:

662 STATE OF WISCONSIN, *ss:*

T. B. Elliott, being duly sworn, deposes and says, that a summons has been duly issued in this action, which is brought for the foreclosure of a mortgage executed by the Milwaukee, Fond du Lac and Green Bay Railroad Company to Edward D. Holton, the subject whereof is real property situated in the fourth ward of the city of Milwaukee, State of Wisconsin. That the said William S. Banning, Selah Chamberlain, James Wostonholme, and August Lauthof are proper parties to such action, and that the relief demanded therein against the said Chamberlain, Lauthof, Wostonholme & Banning consists wholly in excluding them from any interest or lien in the aforesaid property, which interest or lien the said Chamberlain, Wostonholme and Lauthof claim in said

property by virtue of judgments obtained by them against the said La Crosse and Milwaukee Railroad Company, and said interest or lien claimed by William S. consists in a judgment obtained by said Banning against Moses Kneeland, who claims an interest by virtue of a conveyance of said property to said Kneeland; and that as deponent has been informed and believes said defendants William S. Banning, Selah Chamberlain, and James Wostonholme cannot be found within the said State of Wisconsin, but that, as deponent is informed and believes, said William S. Banning is a resident of the city of
663 St. Paul, Minnesota; that said Selah Chamberlain is a resident of the city of Cleveland, Ohio; that the said James Wostonholme is a resident of the city of Providence, Rhode Island.

And affiant further says that the residence of August Lauthof is not known to this party making this application, but that reasonable diligence has been used to ascertain his address, but without success.

T. B. ELLIOTT.

Sworn to before me this 30 day of December, A. D. 1858.

SAMUEL DALE, JR.,
Notary Public, Mil. Co., Wis.

Circuit court, Milwaukee County.

THE BRIDGEPORT SAVINGS BANK
against
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

It appearing to my satisfaction by affidavit that the above named defendants Selah Chamberlain, William S. Banning and James Wostonholme, cannot by due diligence by found within this State; and that the said defendant's August Lauthof residence is neither known to the party making this application, nor can the same by reasonable diligence be ascertained by them; and that a cause of action exists against them, the said defendants, and that they, the said defendants, are proper parties to such action, and that the relief demanded therein against
664 them consists in wholly excluding them, the said defendants, from any interest or lien in the aforesaid property; and that the said Selah Chamberlain, James Wostonholme and August Lauthof have or claim to have a lien or interest in said mortgaged property by virtue of certain judgments obtained by them against the said La Crosse and Milwaukee Railroad Company, and that the said William S. Banning has or claims to have an interest or lien in said property by virtue of a judgment obtained by the said Banning against Moses Kneeland, who claims an interest in said property by virtue of a conveyance of said property to said Kneeland, I do hereby order that the summons herein be published in a newspaper printed in the city of Milwaukee, to wit, in the Daily News, once in each week for six weeks, and that a copy of the summons and complaint in this action be forthwith deposited in the post-office, directed to the said William S. Banning, at St. Paul, Minnesota, and to Selah Chamberlain, at Cleveland, State of Ohio, and to James Wostonholme, at Providence, State of Rhode Island, or that personal service of copies of the said summons and complaint be made on the said William S. Banning, Selah Chamberlain and James Wostonholme.

ARTHUR MCARTHUR,
Circuit Judge.

Afterwards, to wit, February 2, 1859, affidavit of service of summons and complaint filed, as follows:

STATE OF WISCONSIN,
Milwaukee County, ss:

665 Samuel Dale, jr., being sworn, deposes and says that he did, on the 22d day of January, A. D. 1859, serve the summons, complaint & notice of object of action in the above-entitled cause on the defendant Selah Chamberlain by delivering a copy thereof to him personally, and leaving the same with him at the city of Milwaukee, and further saith not.

SAM. DALE, JR.

Sworn to before me this 22d day of January, 1859.
JNO. A. SAVAGE, JR.,
Court Commissioner.

Afterwards, to wit, September 10, 1859, affidavit of service of summons & notice of object of action filed, as follows:

THE STATE OF WISCONSIN,
County of Milwaukee, ss:

Theo. B. Elliott, being duly sworn, deposes and says, that he did, on the first day of March, A. D. 1859, serve James Ludington with a copy of the summons and notice of object of action in the above-entitled cause, by delivering the same to him personally, and leaving the same with him, and that he knows him to be the defendant mentioned in the said summons, &c.

THEO. B. ELLIOTT.

Sworn and subscribed to before me this 27 day of July, A. D. 1859.
SAM. DALE, JR.,
Notary Public, Mil. Co., Wis.

Afterwards, to wit, October 31, 1859, affidavit of B. K. Miller, that the defendants, William S. Banning, Selah Chamberlain, James Wostonholme & A. Sauthof, are non-residents, &c., filed.

Same time copy of lis pendens, filed with affidavit of filing copy
666 thereof in register's office of Milwaukee County endorsed thereon, filed.

Same time, affidavit of B. K. Miller, of mailing copies, summons & complaint to William S. Banning, at St. Paul, Minnesota, Selah Chamberlain, at Cleveland, Ohio, and James Wostonholme, at Providence, Rhode Island, filed.

Same time, proof of publication of summons filed.

Same time, affidavit of B. K. Miller, one of the plaintiff's attorneys, that no copy of an answer has been received, &c., filed.

Same time, notice and service thereof filed, as follows:

Take notice, that an application will be made on behalf of the plaintiff to the circuit court of Milwaukee County, at the court-house in the city of Milwaukee, in said county, on the 19th day of September, 1859, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for the relief demanded by the complaint in this action.

FINCHES, LYNDE & MILLER,
Pl'ff's Att'ys.

To E. Mariner, att'y, in person; to Palmer & Stark, att'ys for Edwin Townsend; Franklin J. Blair, Edmund R. Persons, Lawrence Graham & Donald D. Scott, & H. L. Palmer.

Due service of copy admitted September 9, '59.

E. MARINER,
Pr. S. S. M.

We hereby admit due service of copy of within.

PALMER & STARK,
Att'y's for E. Townsend, F. J. Blair, E. R. Persons, Graham & Scott, & H. L. Palmer.

667 Same day, to wit, October 31, 1859, order filed as follows:

Judgment upon failure to answer the complaint filed in this action having been taken against all of the defendants herein: On motion of Finches, Lynde & Miller, attorneys for the plaintiff, it is ordered that it be referred to Matthew Keenan, esq., residing in the city of Milwaukee, to compute and ascertain the amount due to the plaintiffs for principal and interest upon the bond and mortgage set forth in the plaintiff's complaint which is filed in this action, also to ascertain & report the situation of the mortgaged premises and of the facts & circumstances stated in the complaint, and to examine the agent of the plaintiff on oath as to any payments which have been made, & that he make report thereon with all convenient speed.

By the court.

ARTHUR McARTHUR.

Same time, report of referee and Exhibits A, B & C filed.—Exhibit B being a mortgage executed by the Milwaukee, Fond du Lac & Green Bay Railroad Company to Edward D. Holton, and recorded in the office of the register of deeds of Milwaukee County in vol. 22 of mortgages, pages 480, 481 & 482.

Same day, to wit, October 31, 1859, judgment filed as follows:

On reading and filing the affidavit of Samuel Dale, jr., proving the service of the summons and complaint in this action upon Will-
668 iam A. Prentiss, mayor, and Herman L. Schwarting, treasurer of the city of Milwaukee, and on Selah Chamberlain, and the affidavits of Theodore B. Elliott of the service of the said summons & complaint on Moses Kneeland and upon Edward P. Whaling, secretary of the La Crosse and Milwaukee Railroad Company, and upon James Ludington and the defendants E. H. Brodhead, Anson Eldred, Ira E. Goodall, Harvey Birchard, Rufus King, W. J. A. Fuller, Richard K. Swift, Marcus F. Dow, Volney Chapin, George W. Mygatt, Edwin Palmer, William H. Byron, David McDougall, Newcomb Cleveland, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry C. Simonds, Edwin C. Litchfield, John H. Tesch, Joseph Carney, Joshua Hathaway, William Gemmell, Charles Quentin, August Lauthof, Sebre Howard, The Mercantile Bank, Russell Sage, Philip S. Justice, Elkanah Cobb, John N. Bean, Philip Wilson, J. Howard Mitchell, Avery Hill, A. V. Rudd, Thomas Turton, and John Sercomb having appeared therein by their several attorneys accepting service of the summons and complaint and waiving notice of application to the court for judgment; and the defendants E. Mariner & Henry L. Palmer having entered their appearance therein, and the defendants E. Townsend, F. J. Blair, E. R.

Persons, L. Graham, D. D. Scott, having entered their appearance in said cause by their several attorneys, accepting service of the summons and complaint, and the affidavit of B. K. Miller, one of the attor-
669 neys for the plaintiffs, that no copy of an answer or demurrer to the said complaint has been received nor any notice of retainer having been served therein except by the defendant, E. Mariner & H. L. Palmer, and by the defendants E. Townsend, F. J. Blair, E. R. Persons, L. Graham and D. D. Scott, by their attorneys, and that notice of the application for judgment has been served on them & on the defendants H. L. Palmer & E. Mariner; and the return of the sheriff showing the service of the summons and complaint herein on the defendant John W. Pixley.

And on filing the affidavit of said B. K. Miller, that the defendants, William S. Banning, Selah Chamberlain, James Wostonholme, and A Lauthof, are non-residents of the State of Wisconsin, and have not entered their appearance in the above entitled cause, and on filing the proof of publication as to them, and the affidavit of B. K. Miller, one of the firm of Finches, Lynde & Miller, the attorneys for the plaintiff, that due notice of the pendency of the action was duly filed in the office of the register of deeds of the county of Milwaukee, on the 20th day of December, one thousand eight hundred and fifty-eight, and an order of reference having been made to compute the amount due to the plaintiff upon the note and mortgage set forth in the complaint, also to ascertain & report the situation of the mortgaged premises and of the facts and circumstances stated in the complaint, and to examine the agent of the plaintiff on oath as to any payments which have been made.

670 And on reading and filing the report of the referee named in the order of reference, bearing date the 31st day of October, 1859, it appears that the sum of four thousand six hundred & ninety-four dollars and forty-four cents was due thereon at the date of said report; and that the mortgaged premises might be sold in separate parcels; and that he had examined the agent of the plaintiff on oath as to the payments which have been made on said note.

And on motion of Finches, Lynde & Miller, attorneys for plaintiffs, it is adjudged that the mortgaged premises described in the complaint in this action as hereinafter set forth, or so much thereof as may be sufficient to raise the amount due to the plaintiff for principal, interest and costs, and which may be sold separately without material injury to the parties interested; be sold at public auction in the city and county of Milwaukee by or under the direction of the sheriff of Milwaukee County; that the said sheriff give public notice of the time and place of such sale according to law and the practice of this court; that either or any of the parties to this action may purchase at such sale; that the said sheriff execute to the purchaser or purchasers a deed or deeds of the premises sold; that out of the moneys arising from such sale, after deducting the amount of his fees and expenses on such sale and any lien or liens upon said premises so sold, at the time of such sale for taxes or assessments, the said sheriff pay to the plaintiff or his
671 attorneys the sum of seventy-five dollars and fifty-seven cents, adjudged to the plaintiff for costs and charges in this action, with interest from the date hereof, and also the amount so reported due as aforesaid, together with the legal interest thereon from the date of said report or so much thereof as the purchase money of the mortgaged premises will pay of the same, take a receipt therefor and file it with his report of sale; that he bring the surplus moneys arising from said sale, if any there be, into court without delay, to abide the further order

of this court; that he make a report of such sale and file it with the clerk of this court with all convenient speed; that if the proceeds of such sale be insufficient to pay the amount so reported due to the plaintiff, with the interest and costs as aforesaid, the said sheriff specify the amount of such deficiency in his report of sale, and that the defendant, The La Crosse & Milwaukee Railroad Company, pay the same to the plaintiff, and that the purchaser or purchasers at such sale be let into possession on production of the sheriff's deed and a certified copy of the order confirming the report of sale.

And it is further adjudged that the defendant and all persons claiming under them, or any or either of them, after the filing of such notice of pendency of this action, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged
672 premises so sold, or any part thereof; and it is further adjudged that the injunction heretofore issued against the said city of Milwaukee and Herman Schwarting, treasurer, be, and is hereby, made perpetual; and the said city of Milwaukee, and its officers, agents, and servants, be and hereby are perpetually enjoined and restrained from parting with or disposing of tax and street commissioner's certificates which have been issued against the mortgaged premises, or any part thereof, for the years 1850, 1851, 1852, 1855, & 1856, as described and set forth in the complaint in this cause.

The following is a description of the mortgaged premises hereinbefore mentioned:

All those certain pieces or parcels of land situated in the fourth ward of the city of Milwaukee, and known and described as follows, viz: Lots numbered twelve (12), fourteen (14), and east half of fifteen (15), in block one hundred and fifty-eight (158); lots four (4), seven (7) and ten (10), in block one hundred and fifty-five (155), and lot one (1) in block one hundred and fifty-six (156).

By the court.

ARTHUR McARTHUR.

Afterwards, to wit, on the 1 day of May, A. D. 1860, came A. J. Langworthy, esq., sheriff of Milwaukee County, and filed his report of sale of the mortgaged premises mentioned in the complaint in this action, in the words and figures following, to wit:

To the circuit court of Milwaukee County:

673 In pursuance and in virtue of a judgment of this court, made in the above entitled action, at the regular term thereof, and bearing date the thirty-first day of October, A. D. 1859, by which it was, among other things, ordered and adjudged that all and singular the mortgaged premises mentioned in the complaint in this action, and hereinafter described (unless the defendants should, previous to the day of sale, pay the amount found to be due to the plaintiff according to said judgment), be sold at public auction by or under the direction of the sheriff of the county of Milwaukee, where the said mortgaged premises are situate; that said sheriff give public notice of the time and place of such sale by advertisement pursuant to law and the practice of this court, and that the plaintiff or any other parties in this action might become the purchaser; that the said sheriff execute a deed or deeds to the purchaser of said mortgaged premises on the said sale, and that the said sheriff pay to the said plaintiff or his attorney out of the proceeds of the said sale the taxed costs of this action, and also the amount found to be due on said judgment, together with the legal interest thereon from the date of said judgment (after deducting the amount of

his fees and expenses on such sale, or so much thereof as the purchase-money of the said mortgaged premises will pay of the same, and that the said sheriff take receipts for the amounts so paid, and file the
674 same with his report of sale; and that he bring the surplus moneys arising from said sale, if any there should , into court without delay, to abide the further order of the court; and whereby it was further ordered and adjudged, that if the moneys arising from the said sale should be insufficient to pay the amount so found due to the plaintiff, with the interest and costs as aforesaid, that the sheriff specify the amount of such deficiency in his report of sale.

I, A. J. Langworthy, the subscriber, the sheriff of the county of Milwaukee, aforesaid, in the State of Wisconsin, do respectfully certify and report that, at the request of the plaintiff's attorney, and in the execution of the said judgment, I advertised said premises to be sold by me at the post-office in the city of Milwaukee, at two o'clock in the afternoon, on the eleventh day of February, A. D. 1860; that previous to said day of sale I caused notice thereof to be publicly advertised for three months successively as follows, to wit: by causing a copy of such notice to be printed once in two weeks during the three months immediately preceding said day of sale in the Daily Wisconsin, a public newspaper printed in said county of Milwaukee, which notice contained a brief but intelligible description of the said mortgaged premises; that at two o'clock in the afternoon on said eleventh day of February,
675 A. D. 1860, the day and hour on which the said premises were so advertised to be sold, as aforesaid, I attended at the time and place so as aforesaid fixed for said sale, and exposed said premises for sale at public auction to the highest bidder, and the said premises were then and there fairly struck off as follows, to wit: to the Bridgeport Savings Bank for the sum of four thousand nine hundred & three $\frac{1}{100}$ dollars, said lots having first been offered separately & no bids made, it being the highest bidder therefor, and that being the highest sum bid for the same.

And I do further certify and report that I have executed, acknowledged, and delivered to said purchaser the usual sheriff's deed for the said premises, and have paid over or disposed of the purchase money or proceeds of said sale as follows, to wit: I have paid to the plaintiff's attorneys the sum of seventy-seven $\frac{8}{100}$ dollars, being the amount of the costs, &c., of this action as taxed, and have taken a receipt therefor, which is hereto annexed.

I have retained in my hands the sum of thirty-eight $\frac{40}{100}$ dollars, being the amount of my fees, commissions, and disbursements on said sale, as will appear by reference to the statement hereto annexed, to which reference is made. I have also paid to the plaintiff's attorney the sum of forty-seven hundred eighty-seven $\frac{53}{100}$ dollars, and have taken a receipt therefor, which is hereto annexed.

676 I further certify, after paying & retaining the several sums aforesaid, there remains neither a deficiency or surplus.

I further certify that the premises so sold and conveyed as aforesaid were described in said judgment and in the deed so executed by me as aforesaid as follows, to wit: All those certain pieces or parcels of land situated in the fourth ward of the city of Milwaukee and known & described as follows, viz: Lots numbered twelve (12), fourteen (14), and east half of fifteen (15), in block one-hundred and fifty-eight (158); lots four (4), seven (7), and ten (10), in block one hundred & fifty-five (155); and lot one (1) in block one hundred & fifty-six (156).

A. J. LANGWORTHY,
Sheriff.

Received, Milwaukee, 11th February, 1860, from A. J. Langworthy, the sheriff of Milwaukee County, who made sale of the premises under and by virtue of the judgment mentioned in the annexed report, the sum of seventy-seven $\frac{5}{100}$ dollars, being the amount of costs, &c., in the cause in which said judgment was rendered as taxed, which costs are paid to us by said sheriff under and by virtue of the provisions of said judgment.

FINCHES, LYNDE & MILLER,
Plaintiff's Att'ys.

Received, Milwaukee, 11th February, 1860, from A. J. Langworthy, the sheriff of Milwaukee County, who made the sale of the prem-
677 ises under and by virtue of the judgment mentioned in the annexed report, the sum of forty-seven hundred eighty-seven $\frac{53}{100}$ dollars, which sum, being part of the proceeds of the sale of said premises, is received by me under and by virtue of the provisions of said judgment, being the amount adjudged to be paid to said plaintiff, with interest thereon, as mentioned in said judgment.

FINCHES, LYNDE & MILLER,
Plaintiff's Att'ys.

Note of sheriff's fees, commissions, and disbursements in and about the sale mentioned in the annexed report.

Fee for making sale	$10 00
Drawing, executing, and acknowledging deed	3 00
Making report of sale annexed	3 00
For drawing notice of sale, posting notices, and for travel performed in making sale	3 50
Advertising and affidavit	18 90
	$38 40

Same time, affidavit of publication of notice of sale filed.
On the same day, to wit, May 1, 1860, order filed as follows:

Circuit court, Milwaukee County.

THE BRIDGEPORT SAVINGS BANK
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company et al.

678 On reading and filing the sheriff's report of sale in above entitled cause, and on motion of Finches, Lynde & Miller, pl'ff's att'ys, it is ordered by the court that the said report and sale be, and is hereby, ratified and confirmed.

By the court.

ARTHUR McARTHUR.

STATE OF WISCONSIN,
Circuit Court, Milwaukee County, ss:

I, James Hickcox, clerk of said court, do hereby certify that I have compared the foregoing copy with the original record and proceedings entered in the action therein entitled; that it is a correct transcript

therefrom and of the whole thereof as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this second day of September, A. D. 1869.

[SEAL.] JAMES HICKCOX,
Clerk.

679 To the judge of the district court of the United States for the district of Wisconsin. In equity.

Newcomb Cleveland, of the State of Illinois, and a citizen of said State of Illinois, brings this his bill against the La Crosse & Milwaukee Railroad Company, a corporate body created and existing by and under the laws of the State of Wisconsin, and Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, citizens of the State of Wisconsin, and Selah Chamberlain, of the State of Ohio, and a citizen of the State of Ohio, defendants.

And thereupon your orator complains and says that heretofore, to wit, on the 7th day of October, A. D. 1857, in the district court of the United States for the district of Wisconsin, by the consideration and judgment of said court, your orator recovered against the said La Crosse & Milwaukee Railroad Company the sum of one hundred twelve thousand two hundred and seventy-one dollars and seventy-six cents for the damages which he had sustained, as well by the breaches of the said company defendant's several covenants to and with your orator, as for the costs and charges of your orator by him about his suit in that
680 behalf expended, which were adjudged to your orator in and by said court, whereof the said company defendant was convicted on the day and year last aforesaid, as by the record of said judgment in the office of the clerk of said court (reference being thereto had, and to which for greater certainty your orator prays leave to refer) will more fully and at large appear.

And your orator further shows unto your honor that said judgment, so recovered as aforesaid, remaining in full force and unpaid, and the whole amount thereof remaining unpaid and unsatisfied, your orator, on or about the 22d day of October, A. D. 1857, for the purpose of obtaining satisfaction of said judgment, sued and prosecuted out of the said district court a writ called a writ of fieri facias, directed to the marshal of said district of Wisconsin, by which said writ the said marshal was commanded that of the goods and chattels of the said La Crosse & Milwaukee Railroad Company, defendant, in his district, he should cause to be made the sum aforesaid, recovered as aforesaid by your orator; and that if sufficient goods and chattels could not be found, then to cause the said amount to be made of the lands and tenements of said company defendant which it had at the time of docketing said judgment, to wit, on the 7th day of October, A. D. 1857, or at any time thereafter; and was afterwards, to wit, on the 22nd day of October,
681 A. D. 1857, delivered to the said marshal to be executed in due form of law; and that afterwards, to wit, on or about the 27th day of October, A. D. 1857, the said marshal levied said writ of fieri facias upon the following described property, to wit, at the city of Milwaukee, in said district, that is to say:

The La Crosse & Milwaukee Railroad and all the interest of the La Crosse and Milwaukee Railroad Company therein, with all the franchises, rights, and privileges thereunto belonging and appertaining, including roads, roadways, rights of way, and real estate of every description, roadbeds, tracks, ties, rails, station-houses, & buildings and

grounds, sheds & grounds, engine-houses & grounds, shops & grounds, water-houses & grounds, cars and appurtenances, locomotive engines and appurtenances, more particularly described as follows, viz: One passenger-depot, one store house, two freight-depots, grain platform and shed, blacksmith-shop, three tank-houses, machine-shop, stationary-engine house, paint-shop, lumber-house, coppersmith shop, iron house, blacksmith-shop, turn-table, circular-engine house, car-shop, all in the city of Milwaukee; tank-house on section 12 of said railroad; one ditto on section 22; passenger and freight depot at Richfield; one turn-table and passenger and freight depot at Schleisengerville; engine-house, tank-house, and passenger and freight depot at Hartford; passenger and freight depot at Rubicon; passenger and freight depot and tank-house at
682 Woodland; ditto at Iron Ridge; turn-table, passenger and freight depot, engine-house, and tank-house at Horicon; passenger and freight depot at Junction; ditto at Rolling Prairie; turn-table, engine-house, tank-house, and passenger and freight depot at Beaver Dam; passenger and freight depot and tank-house at Fox Lake; passenger and freight depot at Cambria; passenger and freight depot, turn-table, tank-house, and engine-house at Midland; passenger and freight depot, turn-table, engine-house, and tank-house at Portage City, together with the grounds upon which such houses and buildings are situated, and which are appurtenant thereto; twenty-one locomotive engines, 10 first-class passenger-cars, 2 second-class ditto, 4 baggage-cars, 164 house freight-cars, 120 platform-cars, 30 gravel-cars, and 17 hand-cars.

Also all that portion of the La Crosse & Milwaukee Railroad known as the Watertown Division of said railroad, and all the interest of the said La Crosse and Milwaukee Railroad Company therein, with all the franchises, rights, and privileges thereunto appertaining, including roads, roadways, rights of way, and real estate of every description, road-beds, tracks, ties, rails, station-houses, buildings and grounds, shops and grounds, water-houses and grounds, engine-houses and grounds, cars and appurtenances, locomotives and appurtenances; also
683 about 45,000 bars of railroad iron, more particularly described as follows, viz: One engine-house in the city of Milwaukee; one station-house at the junction; one ditto and woodshed at Pewaukee; one station house at Hartland; one ditto at Pine Lake Station; one water-house, one woodshed, and one station-house at Oconomawoc; one station-house, frame shed, machine-shop, car-shop, blacksmith-shop, two water-houses, engine-house, and woodshed at Watertown; station-house and water-house at Lowell; station-house, engine and water-house at Columbus, together with the grounds upon which such houses and buildings are situated, or which are appurtenant thereto; 7 locomotive engines, 67 box-cars, 35 rack-cars, 10 hand-cars, 4 passenger-cars, 2 baggage-cars, 20 dump-cars, about 42,612 bars of railroad iron, lying piled on lots in blocks 40 and 41, in the 2nd ward in the city of Milwaukee.

Also lots 9, 10 & 11 in block 3, and lots 1, 2 & 3 in block 47, in the fifth ward of city of Milwaukee. Lots 1 & 4 in block 156; lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 in block 155; $\frac{1}{3}$ of block 157, except lot 8, and the bayou adjoining said block; $\frac{1}{3}$ of lots 8, 9 & 10; all of lots 12, 13 & 14; $\frac{1}{3}$ of lots 16 & 17 and E. $\frac{1}{2}$ of 15 in block 158, in the 4th ward of the city of Milwaukee.

All of which said property was then and there, to wit, at the time of said levy, situated in said district of Wisconsin, and was the prop-
684 erty, goods, chattels, rights, franchises, lands and property of the said La Crosse Railroad Company, subject to levy of execution or fieri facias, in manner and form as aforesaid; and all of which said prop-

erty the said marshal afterwards, to wit, on the 30th day of October, A. D. 1857, advertised for sale at public auction, according to law, to satisfy said writ, to wit, on the 15th day of December, A. D. 1857, at the said marshal's office in the said city of Milwaukee, in said district, at the hour of ten o'clock a. m. of that day, as the law in that behalf requires, as by the said writ of fieri facias, and the directions and certificate of said marshal thereon endorsed, and now in the hands of the said marshal, will more fully appear, and to which or a copy thereof your orator prays leave to refer.

And your orator further shows that the whole of said judgment yet remains unpaid and unsatisfied, and that said judgment remains in full force unreversed and unannulled, and that no part of the said judgment has been paid to your orator, but that to pay the same the said defendant company ever has and still does neglect and refuse, and your orator shows that there is now equitably and actually due to your orator on said judgment the sum of one hundred twelve thousand two hun-
685 dred and seventy-one dollars and seventy-six cents together with interest on the sum of one hundred eleven thousand seven hundred twenty-seven dollars and seventy one cents thereof, from the day of the rendition of said judgment as aforesaid, over and above all just claims of the said The La Crosse & Milwaukee Railroad Company, defendant, by way of offset or otherwise; and that this bill is not exhibited by collusion with the said The La Crosse & Milwaukee Railroad Company, nor for the purpose of protecting the property, rights, or effects of said company, defendant, nor any part thereof, against the claims of other creditors, but for the sole purpose of obtaining the relief hereinafter prayed.

And your orator further shows that the said La Crosse & Milwaukee Rialroad Company, defendant, at Milwaukee, in said district, heretofore, to wit, on the 26th day of September, A. D. 1857, designing and intending to injure, delay, cheat and defraud the creditors of said company and to injure, delay, cheat, hinder and defraud your orator of his just debt and damages against said company, did pretend to make, and in form did make, seal, execute and deliver to one Selah Chamberlain (whom your orator prays may be made a defendant to this bill), a pretended lease, in and by which said lease, dated the day and year last
686 aforesaid, the said La Crosse & Milwaukee Railroad, pretended to, and did express, that it, said company did sell and convey to said Selah, all its personal property of every name, kind and description in the State, district of Wisconsin, except all such personal property as was then used in and was then appurtenant to the operation of what is known and called the Watertown division of the La Crosse and Milwaukee Railroad, and did pretend to, and in said lease did express that it, said company, did let and lease to said Selah from and after the 30th day of September, A. D. 1857, for an indefinite term of time, to be determined in the manner thereinafter specified, its, said company's, entire railroad and railroad route, from the city of Milwaukee by way of Horicon and Portage city to the city of La Crosse, together with its, said company's, rights of way, depot grounds, and all buildings, tenements and fixtures, of whatever kind or description, connected therewith or appurtenant thereto, together with all estate, rights, privileges and appurtenances and franchises connected therewith or belonging or incident thereto, subject only to such prior or superior liens as might or did exist thereon, and all their existing contracts and agreements with any other company whose railroad connects with the La Crosse & Milwau-
687 kee Railroad, which said pretended lease contained many cove-

nants and agreements between said company and said Selah, intended, as your orator is informed and believes and therefore says, to make said lease look and seem more specious and circumstantial, and to cover still deeper the fraudulent design of said company in making said lease.

And your orator further shows to the court that after the making and delivery to said Selah of said lease as aforesaid, to wit, on the day and year last aforesaid, the said Selah entered into possession of all the property, rights, privileges and franchises described, enumerated and mentioned in said lease, and ever since has taken and received, and is now taking and receiving all tolls and profits, income and revenue of said company's said railroad, and other property described in said lease aforesaid.

Your orator is informed and believes, and therefore so says, that said company had no legal right or competent authority to make said lease; that the same was made to delay and defraud your orator as a creditor of said company, and is directly in fraud of his rights, and constitutes, in connection with said Selah's possession and claim of title thereto under the same, a cloud upon your orator's right to sell said property
688 on your orator's said writ of fieri facias, and seems to be and is an impediment in the way of your orator's said writ; and that said Selah is now in possession of all the said property, rights, franchises and privileges, and claims and pretends to be the absolute owner of all the said personal property so expressed in said lease to be sold to him, said Selah.

And your orator further shows that at Milwaukee, in said district, heretofore, to wit, on the 30th day of September, A. D. 1857, the said company defendant, designing and intending to cheat and hinder, delay and defraud your orator and the creditors of the said company, did pretend to, and in form did make, subscribe, seal and deliver to one D. C. Freeman (whom your orator prays may be made a defendant to this bill) a lease or instrument in writing, in which said lease the said company did pretend to and did express that it did then and there and thereby sell and convey to said Freeman all its personal property of every name, kind and description in the State of Wisconsin, used in and appurtenant to the operation of the Watertown division of the La Crosse & Milwaukee Railroad; and said company did therein and thereby also pretend and express, that it did thereby lease and let unto said Freeman from and after the day and year last aforesaid, for the term of one
689 year then next ensuing, its entire railroad and railroad route from the city of Milwaukee by the way of Watertown and Columbus to Mainland, in the county of Columbia, and commonly called and known as the Watertown division of the La Crosse & Milwaukee Railroad, together with its right of way, depot grounds and all buildings and tenements of whatever kind and description connected therewith, or belonging or incident thereto; which said pretended lease contains many mutual covenants between said company and said Freeman.

Your orator says that he is informed and believes, and so says, that said company had no legal authority to make said lease, and that the same was made and delivered by said defendant with intent to delay, hinder and defraud its creditors, as the said Freeman, when he received the same, to wit, on the 30th day of September, A. D. 1857, well knew. Your orator further shows that said Freeman immediately after the execution and delivery to him of said lease, did take possession of all the property enumerated in said lease, and ever since has, and now does claim to and does receive all tolls, revenue and profits arising from the

property in said lease enumerated, which is part of the property levied on by said marshal under your orator's said writ of fieri facias, as hereinbefore stated, and that said lease (which was on the 2nd day
690 of October, A. D. 1857, recorded in the office of the secretary of state of the State of Wisconsin), and the possession and claim of right of said Freeman under said lease are a cloud upon your orator's right to sell said property on the writ of fieri facias issued in his favor as aforesaid, and an impediment in the way of the execution of said writ.

Your orator further shows that heretofore, to wit, on the 2nd day of October, A. D. 1857, (while the trial of the issues joined in the action in which your orator recovered the said judgment hereinbefore mentioned was proceeding in said court, and after it had become apparent that your orator would recover a large sum of money in said action,) the said The La Crosse & Milwaukee Railroad Company, defendant, intending and designing to cheat and defraud your orator as a creditor of said company defendant, and to prevent your orator from collecting any judgment he might recover in said action, and to delay, hinder, put off, cheat and defraud the said creditors of said company defendant, did, to wit, at the city of Milwaukee, in said district, suffer a judgment to pass against it, said company defendant, by confession, in the said district court of the United States for the said district of Wisconsin, in
691 favor of said Selah Chamberlain, without service of process or suit brought, for the sum of six hundred twenty-nine thousand and eighty-nine dollars and seventy-two cents damages, and fifteen dollars and fifty cents costs, in all for the sum of six hundred twenty-nine thousand one hundred and five dollars and twenty-two cents, which said judgment, fraudulently suffered as aforesaid, was duly and regularly entered and docketed in said court on the day and year last aforesaid, and appears and seems to be a lien and encumbrance upon all the real property of the said defendant company within the said district of Wisconsin, including the real property hereinbefore described and levied upon as aforesaid.

Your orator further shows that he is informed and believes and therefore he says that the said company defendant, when it so suffered said judgment to pass by confession in favor of said Chamberlain, as aforesaid, was not indebted to said Chamberlain in the sum described and specified in said confession of judgment, and did not owe, nor was indebted to said Chamberlain in a sum exceeding the sum of fifty thousand dollars, and that no consideration or value was ever received by, or at any time accrued to, said company defendant for said judgment above and beyond the sum of fifty thousand dollars, and
692 that said judgment was by said company defendant suffered and permitted to pass, and be entered and docketed, as aforesaid, with the intent thereby to hinder, delay, defraud, and put off the creditors of said company defendant, (and particularly to hinder, delay, and defraud your orator,) by the pretence that said judgment was a good and valid lien upon all the real property of the said defendant company in said district; and your orator is informed, and believes, and therefore says that the said Chamberlain, when he so received the said lease, and when said judgment was entered up and docketed in his favor as aforesaid, well knew that said company designed and intended thereby respectively to hinder, delay, cheat, and defraud its creditors (and particularly your orator); that said Selah intended, when he so received said lease and said confession of judgment respectively, to thereby respectively injure, defraud, and delay your orator, and that

the said Selah has sued out writ of fieri facias on said judgment in his favor, and is now threatening to sell under the same the railroad iron levied on by your orator, as aforesaid, of great value, to wit, of the value of four hundred and twenty thousand dollars.

Your orator further shows that on or about the 15th day of June, A. D. 1856, the said company defendant was the sole owner and
693 seized in fee of each and every of the said lots of land, city lots in the city of Milwaukee, in said district, hereinbefore particularly described, and on which said marshal has levied your orator's writ of fieri facias, as hereinbefore set forth, and that said lands were then and there of great value, to wit, the value of one hundred thousand dollars and upwards; and that Byron Kilbourn, Moses Kneeland, and James Ludington were three of the directors of said company defendant on the day and year last aforesaid, and that on or about the day and year last aforesaid, while said company defendant was so seized of said land, the said Moses Kneeland and James Ludington were appointed by the board of directors of said company defendant, or by the executive committee of said board (which said board was composed of the said Kilbourn, said Kneeland, said Ludington, and others), a committee to sell and dispose of said lands, worth at that time to the said company (as the said Kilbourn, Kneeland, and said Ludington then well knew) more than one hundred thousand dollars.

And your orator is informed, and believes, and therefore says that the said Kneeland and said Ludington, then and there designing and intending to injure and defraud said company and its creditors,
694 and disregarding their duty as directors, as aforesaid, in the premises, and intending unlawfully and fraudulently to acquire to themselves and the said Kilbourn, by a violation of their duty as directors, as aforesaid, the said lands, for a grossly inadequate price, did sell and transfer said lands, worth, as they then and there well knew, more than one hundred thousand dollars, to one Charles D. Nash for the nominal consideration of twenty thousand dollars in bonds or stock of said company defendant, but that said Kilbourn, said Kneeland, and said Ludington, or one of them, furnished to said Nash, directly or indirectly, whatever the said Nash pretended to pay to said company for said lands; and that said sale was made to said Nash with the fraudulent secret arrangement and undestanding between said Nash and said Kilbourn, said Kneeland, and said Ludington, or one of them, that said Nash should thereafter, when requested by said Kilbourn, Kneeland, or Ludington, convey and transfer said lands to said Kneeland, said Kilbourn, or said Ludington, for the benefit of said Kilbourn, Kneeland, and Ludington, for a nominal or no consideration; and that said Nash was wholly disinterested in said pretended sale to him of said land, and that soon after the conveyance of said lands to said Nash, that the said Nash did, in pursuance of said fraudulent and corrupt arrangement
695 hereinbefore stated, convey and transfer said lands to said Kneeland for no consideration, or a nominal or pretended consideration; that said Kneeland, soon after the conveyance aforesaid to him, conveyed and transfered to said Ludington one-third of said land for no consideration, or for a nominal and pretended consideration, but really in pursuance of said corrupt agreement; and that said Kneeland now holds a record title to two-thirds of said land for himself and the said Kilbourn; that said Kneeland, said Kilbourn, and said Ludington pretend to hold these lands, as aforesaid, which are now worth more than two hundred thousand dollars, in fraud of your orator's rights as a creditor of said company, and by reason of a violation of their duty as direct-

ors, as aforesaid, and trustees of this same property, and that the same ought to be applied to the payment of your orator's said judgment.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters, things, statements and charges aforesaid,
696 and that, too, as particularly as if the same were here again repeated paragraph by paragraph, and they thereunto particularly interrogated; and that they may also make answer as aforesaid to the several interrogatories hereinafter set forth and numbered, as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether your orator did or not receive a judgment as hereinbefore stated, and for the amount hereinbefore stated, and whether the said proceedings under the said judgment have been taken respectively as set forth in said bill.

2. And whether the amount as hereinbefore stated is or not now equitably due on said judgment.

3. Whether or not said company defendant did, on the 26th day of September, A. D. 1857, make, execute, seal and deliver to said Chamberlain a pretended lease or other instrument in writing, dated on that day or some other day, by which said company defendant did sell and convey to said Chamberlain all of said company's personal property of every name, kind and description, in the State district of Wisconsin, except all such personal property as was then used in, and was appurtenant to what is known and called the Watertown division of
697 the La Crosse and Milwaukee Railroad; and whether or not said company defendant did, in said lease, pretend to and express that it did then and there lease to said Chamberlain, from and after the 30th day of September, A. D. 1857, for an indefinite term and time, to be determined in the manner therein specified, its said company's entire railroad and railroad route, from the city of Milwaukee by way of Horicon and Portage City, to the city of La Crosse, together with said company's right of way, depot grounds, and all buildings, tenements, and fixtures, of whatever kind or description, connected therewith or appurtenant thereto, together with all estate, rights, privileges and appurtenances and franchises connected therewith, or belonging or incident thereto; and state definitely all the terms, provisions, and conditions of said lease or instrument in writing, and set forth a copy thereof.

4. Whether or not the said Chamberlain after the making and delivering to him of the said lease or instrument in writing, entered into possession and enjoyment of all the property, rights, privileges, franchises, enumerated and mentioned in said lease or instrument in writing; and whether said Chamberlain has ever since taken and received and is now taking and receiving all tolls, profits, income, and revenue of said company's said railroad, and other property described
698 in said lease aforesaid.

5. Whether or not there was any, and if any what, consideration or advantage paid, accruing or resulting to said company defendant for the making and delivery of said lease or instrument in writing to the said Chamberlain, other than that appearing upon the said lease; if so, what; state fully.

6. Whether or not the said Chamberlain now claims, and pretends to

be the absolute owner of any, and if any what, portion of the property described and enumerated in said lease or instrument in writing.

7. Whether or not on the 2nd day of October, A. D. 1857, or any other day, the said company defendant did, at Milwaukee, in said district, suffer a judgment to pass against it, said company defendant, by confession or otherwise, in the said district court of the United States for the said district of Wisconsin, in favor of said Selah Chamberlain, without service of process or suit brought or otherwise, for the sum of six hundred and twenty-nine thousand one hundred and five dollars or any other, and what other sum; and for what cause, upon what claim, contract, debt, right, or cause of action was the said judgment confessed; or if upon and for different claims, contracts and causes of action, state definitely and fully each, every and all of said claims,
699 rights or contracts, and state fully when, where, and for what cause and upon what consideration, and under what circumstances each and every right, claim and contract for which said judgment was confessed accrued.

8. Whether or not said company was indebted to the said Chamberlain at the time of suffering said judgment; and, if so, upon what contract, express or implied, when, how, and where, and upon what consideration entered into; and set forth definitely, fully, and certainly each and every item of indebtedness of said company to said Chamberlain, embraced in said judgment; and set forth fully how, when, where, and for what each and every of said items of indebtedness accrued.

9. Whether or not there was any dealings and transactions between the said Chamberlain and the said company defendant at the time of suffering the said judgment as aforesaid, or at any previous time, and what was the state, account, and balance of such transaction, of what items did they consist, to what subject matter did they relate, what claims had the said company against the said Chamberlain for money, bond, mortgage, stock, or other things of value, loaned or paid to, or in any way or manner entrusted with the said Chamberlain by said company defendant; and what claims or items of account had the
700 said Chamberlain against the said company; what was the date, amount, and nature thereof; when, where, and for what did they accrue, and whether any accounting or settlement was had by and between the said Chamberlain and the said company defendant at the time of suffering said judgment, or at any previous time; and, if any such accounting or settlement was had as aforesaid, in whose presence it was had, by whom was it conducted on the part of said company; when and where was it had, how long time was employed in such settlement, and what were the items and charges thus settled and accounted on each side, and what was the balance, and in whose favor ascertained.

10. Whether or not any other person or persons than the said Chamberlain are directly or indirectly interested in said judgment so suffered as aforesaid; and whether or not the said Byron Kilbourn, Moses Kneeland and James Ludington, or either of them, or any other person, and if any other who, have any interest, directly or indirectly, in said judgment so suffered as aforesaid; and, if neither of the persons above named are not directly and in form concerned or interested in said judgment with said Chamberlain, whether there is not a secret understanding and arrangement that they or either of them shall enjoy and share
701 in some way and at some time a part of said judgment, if the same shall be collected.

11. Whether or not said Chamberlain has sued out a writ of fieri facias on the judgment so suffered in his favor, and caused the same to be

levied upon, and is threatening and intending to sell, to satisfy said writ, some part of the property hereinbefore described.

12. Whether or not the said company defendant on or about the fifteenth day of June, A. D. 1856, or at any other time was the owner and seized in fee, or otherwise, and how otherwise, interested in the said several lots of land, or either of them, in the said city of Milwaukee, hereinbefore described in said bill, namely, lots nine, ten, and eleven in block three, and lots one, two, three, in block 47, in the 5th ward of the city of Milwaukee. Lots 1 & 4, in block 136. Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 10, 12, 13, 14, in block 155; ⅓ of block 157, except lot 8, and ⅓ of the bayou adjoining said lot; ⅓ of lots 8, 9, & 10; all of lots 12, 13, & 14; ⅓ of lots 16 & 17, and E. ½ of 15, in block 158, in the 4th ward of the city of Milwaukee, or some part thereof, or some part of some of said lots, and what was the value of said lands respectively; and whether the said Byron Kilbourn, Moses Kneeland, and James Ludington, or either of them, were directors of said company defendant while it was so
702 interested in said lands; and whether on the day and year last aforesaid, or on some other day, while the said company defendant was so seized of or in some way interested in said land, and while the said Kilbourn, said Kneeland and said Ludington were directors of said company defendant the said Moses Kneeland and James Ludington were appointed by the board of directors of said company defendant, or by the executive committee of said board, a committee to sell and dispose of the said land hereinabove described; and whether said Kneeland and said Ludington made a contract of sale, either in writing or by parol, which was subsequently ratified and executed by said company defendant, agreeing to sell the said lands to one Charles D. Nash; and, if so, for what sum and consideration were the said lands sold to the said Nash, how did he pay therefor, in money or in bonds, mortgages, stock, or whatever thing of value, where did the said Nash obtain what he paid therefor, and was it not directly or indirectly understood at the time of said pretended sale to said Nash that he, said Nash, should thereafter at some time and upon some terms, and, if so, what time and what terms, convey said lands to said Kilbourn, said Kneeland, or said Ludington.

13. Whether the said Nash, after the said conveyance to him,
703 did convey said lands, or any part thereof, to said Moses Kneeland; if so, state when said conveyance was made, what consideration, if any, did the said Kneeland pay to the said Nash; was it paid in money, notes, bonds, mortgages, or other, and what other, thing of value; and, if said Kneeland paid any consideration for such conveyance to him, what did the said Nash do with, and how did he dispose of the same; and did not the same in some way, or in some form, or under some color or device, return to the said Kneeland or to some other person for the said Kneeland's benefit.

14. Whether any consideration was paid to the said Nash, and if so, whether it was all paid by the said Kneeland, and whether the said Kilbourn or the said Ludington paid any part thereof, or contributed in any manner thereto.

15. Whether the said Kneeland at any time, and what time, after said conveyance to him, conveyed one-third of, or any interest in (and if any, what portion and what interest), of said lands so conveyed to him, to the said James Ludington, and what consideration did the said Ludington pay to said Kneeland therefor; when, where, and in whose presence was it paid; was it paid in money, notes, bonds, mortgages or other (and what other) thing of value; and what did the said
704 Kneeland do therewith, and how dispose thereof, and did not

the same in some way or under some cover or device return to the said Ludington, or to some other person or persons for his benefit.

16. Whether the said Byron Kilbourn, Moses Kneeland and James Ludington, or either of them, claim to own, or to be interested in said lands or any part thereof, and what part or what interest therein does the said Kneeland, the said Kilbourn, and the said Ludington respectively claim to have or hold of or in the said lands, and what is the value of the portion thereof or interest therein held or claimed by the said Kneeland, the said Kilbourn, and the said Ludington respectively, and what is the present aggregate value of said lands.

17. Whether or not the said company defendant did, on the 30th day of September, A. D. 1857, or any other day, make and deliver to said Freeman a lease or instrument in writing as set forth in this bill, and whether the said Freeman paid any consideration to said company for said lease, and if so, what consideration, when, how, and in what manner was it paid, and for what reason, and upon what motive was said lease given to said Freeman.

18. Whether there is any secret agreement, understanding or arrangement, that any other (and what other) person than the said Free-
705 man should be interested in or in any way share the profits and avails of said lease to said Freeman.

And that the said pretended lease to the said Chamberlain may be decreed and declared to be illegal, unauthorized, fraudulent and void as to your orator, and that the said Chamberlain may be decreed to account for and pay over to your orator or to a receiver to be appointed in this cause, to be applied in payment of your orator's said judgment, all the tolls, profits, income, and revenue which have or may accrue to the said Chamberlain from his use and possession under the lease as aforesaid; and that the said Chamberlain may be decreed to surrender all claim, right, title and property under said lease, and that said lease may be cancelled, and that the said Chamberlain and all persons claiming by, through or under him, may be perpetually enjoined from setting up or making any claim under said lease.

And that the said judgment in favor of the said Chamberlain may be decreed to be fraudulent, and as to your orator wholly void, and that the same may be reversed, annulled and utterly held at naught; that all proceedings under said judgment may be set aside; that the said Chamberlain and all persons for him, or claiming by, through, or
706 under him, may be perpetually enjoined from setting up any claim or right under said judgment, and from all measures to collect or enforce the same as against your orator; that the several lots of land hereinbefore particularly described may be decreed and declared subject to the lien of your orator's said judgment, and that your orator's said judgment may be declared to be a lien upon all of said lands, and all real property owned by the said company defendant in the said district of Wisconsin, and described hereinbefore and in said lease, and that your orator may be decreed and declared to be authorized to sell all of said lots of land hereinbefore described, or so much thereof as shall be necessary to satisfy his said judgment, and that the said Kneeland, the said Kilbourn, and the said Ludington may be decreed to join in the conveyance of the land (or so much thereof as shall be sold) to the purchasers at said sale; and that the said Kilbourn, the said Kneeland, and the said Ludington, and all persons for them, or either of them, or claiming by, through, or under them, or either of them, be perpetually enjoined from making or pretending any right to, or interest or estate

therein; and that said conveyance of said land be declared null and void.

And that your orator may have such other and further relief
707 as the nature of his case may require, and as shall be agreeable to equity and good conscience; and that the said Chamberlain, and the said Kilbourn, and the said Kneeland, and the said Ludington may each and every of them be strictly enjoined and prohibited from selling, transferring, conveying, leasing, incumbering, or in any way interfering or intermeddling with any of the said property hereinbefore described, and held, claimed, enjoyed or possessed by them respectively, or by any other person or persons for them, or either of them; and that a receiver may be appointed with the usual powers of a receiver, according to the practice of said court; and that said lease to said Freeman may be decreed and declared fraudulent and void; and that the said Freeman and all persons claiming by, through and under him, may be enjoined from claiming any right under said pretended lease to him; and that the said lease to him may be cancelled, and he be compelled and decreed to relinquish all possession of property in the said lease enumerated; and that the said Freeman may be enjoined from leasing, selling, incumbering, mortgaging, disposing of or intermeddling with said property enumerated in said lease to him, said Freeman,

May it please your honor to grant unto your orator a writ of
708 injunction issuing out of and under the seal of the said court, directed to the said Byron Kilbourn, D. C. Freeman, Moses Kneeland, James Ludington, and Selah Chamberlain, defendants, their counsellors, attorneys, solicitors, and agents, commanding and strictly enjoining them in the manner hereinbefore mentioned, under a certain penalty, until the further order of the court.

May it please your honor to grant unto your orator a writ of subpœna, issuing out of and under the seal of said court, to be directed to the said La Crosse & Milwaukee Railroad, Byron Kilbourn, D. C. Freeman, Moses Kneeland, James Ludington, and Selah Chamberlain, Charles D. Nash, defendants, commanding them and each of them by a certain day and under a certain penalty therein to be named and inserted, to be and appear in said court at the court-house of said court, in the city of Milwaukee in said district, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, &c.

NEWCOMB CLEVELAND.

MATT. H. CARPENTER,
Sol'r for Compl't.
WM. P. LYNDE,
Of Counsel.

709 DISTRICT OF WISCONSIN, *ss:*

Newcomb Cleveland, being personally before me, and being by me first duly sworn, this thirty-first day of October, A. D. 1857, deposed and swore, that he had heard read the foregoing bill of complaint by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters stated to be on the information and belief of said complainant, and as to those matters he believes it to be true.

JNO. A. SAVAGE, JR.,
U. S. Commissioner District of Wisconsin.

The La Crosse Railroad Company is required to answer the interrogatories, numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 17, 18. Defendant Byron Kilbourn is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18. Defendant Moses Kneeland is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18.

Defendant James Ludington is required to answer the interrogatories numbered 1, 2, 7, 8, 9, 10, 12, 13, 14, 15, 16.

Defendant D. C. Freeman is required to answer the interrogatories numbered 1, 2, 17, & 18.

Defendant Charles Nash is required to answer the interrogatories number 1, 2, 12, 13, 15.

Defendant Selah Chamberlain is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14.

710 *Answer of Moses Kneeland.*

The district court of the United States for the district of Wisconsin, in chancery.

The separate answer of Moses Kneeland, one of the defendants to the bill of complaint of Newcomb Cleveland, complainant, against this defendant, impleaded with the La Crosse & Milwaukee Railroad Company, Byron Kilbourn, James Ludington, Selah Chamberlain, Charles D. Nash, and De Witt C. Freeman.

This defendant now and at all times saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says:

That he has been informed and believes, and therefore admits that the said complainant recovered judgment against the La Crosse and Milwaukee Railroad Company for the amount, at the time, and in the manner alleged in said bill of complaint, but whether the whole or any part thereof is still due and owing to the said complainant, this de-
711 fendant has no knowledge, and he leaves the complainant to his proofs in that behalf.

And this defendant, further answering, says that he has been informed and believes, and therefore admits, that the said La Crosse & Milwaukee Railroad Company did, on or about the 26th day of September, A. D. 1857, make, execute, seal, and deliver to the said Chamberlain, a lease or other instrument in writing, a copy whereof is annexed to the answer of the La Crosse and Milwaukee Railroad Company, filed in this case; but this defendant was not present at the execution thereof, and did not participate in the negotiations preliminary thereto, and he can therefore only say that he verily believes that said instrument was executed in good faith, for the purposes, under the circumstances, and in the manner stated in the said answer of the La Crosse & Milwaukee Railroad Company; and for the particulars of said instrument he refers to the copy thereof annexed to the answer of the said La Crosse & Milwaukee Railroad Company as aforesaid.

And this defendant, further answering, says that he is informed and believes, and therefore admits, that the said Chamberlain did, after the delivery of said instrument to him, enter into the possession and
712 enjoyment of all the property, rights, privileges, and franchises

mentioned in said instrument, and has ever since taken and received, and is now taking and receiving, the tolls, income, and profits of said railroad and other property, according to the true intent and meaning of said instrument.

This defendant further answers and says that he is informed and believes that there was no consideration or advantage paid or resulting to said company for the making and delivery of said instrument to the said Chamberlain other than what appears on the face of said instrument.

And this defendant, further answering, says that he is informed and believes, and therefore admits, that the said La Crosse & Milwaukee Railroad Company did, on or about the second day of October, A. D. 1857, suffer judgment to be entered against it in favor of the said Chamberlain for about the sum of six hundred and twenty-nine thousand one hundred and five dollars; and this defendant is informed and believes that said judgment was entered up upon and for a good and valuable consideration, and that the amount thereof was actually due and owing to the said Chamberlain by the said company on the said second day of October; and this defendant is informed and be-
713 lieves that said judgment was so as aforesaid entered for the legitimate and honest purpose of securing a valid and meritorious debt, and with no intent or design to cheat or defraud the said complainant or the other creditors of the said company; and this defendant is credibly informed and believes that said judgment was entered up upon a promissory note executed by the said company to the said Chamberlain, accompanied by a warrant of attorney authorizing judgment to be entered thereon; and that, so far from the said judgment having been entered upon some merely pretended or fictitious indebtedness, in whole or in part, the same was confessed for an actual bona-fide indebtedness then due and owing by the said company to the said Chamberlain; and that there was then, as this defendant is informed and believes, the sum for which said judgment was confessed due to the said Chamberlain from the said company, as appears from the books of said company and the estimates of the chief engineer thereof.

And this defendant is informed and verily believes that the real and true consideration upon which the said indebtedness accrued and was created is as follows, that is to say: on or about the 20th day of
714 November, in the year 1856, the said La Crosse and Milwaukee Railroad Company entered into a contract with the said Chamberlain, whereby the said Chamberlain agreed to do and perform certain labor and services for the said company in the ballasting of its track between the city of Beaver Dam and the city of Portage City, being the part of the said railroad known as the "eastern division," upon the terms and at the rates and prices fixed in and by said contract, a true copy of which said contract is annexed to the answer of the said company filed in this case and marked Schedule B; that the said Chamberlain performed the said contract on his part, and the amount, character, and value of the work done under the same appears by the final estimate of E. W. Woodward, chief engineer of said company, a copy whereof is annexed to the answer of the said company and marked Schedule C; and that in addition thereto the said Chamberlain did and performed in and about such work extra labor and services, and furnished and provided means and materials therefor, and for which bills and invoices were from time to time furnished by him to said company, the aggregate amount whereof appears in the statement of account
715 annexed to the said answer of the said company, and marked respectively 1, 2, 3, 4, 5, and 1*a*, 2*a*, 3*a*, 4*a*, 5*a*, 6*a*, 7*a*, 8*a*.

That the actual amount accruing to the said Chamberlain for work done and materials furnished in and about the work upon the said "eastern division" is about the sum of one hundred and twenty-four thousand eight hundred and fifty-six dollars and sixty-four cents; and that all the payments made by the said company to the said Chamberlain thereon appear in the general account of the said Chamberlain with the said company, which said account is particularly and fully set out in the answer of the company aforesaid.

That on or about the 20th day of January, A. D. 1857, the said Chamberlain entered into another contract with the said company for the construction by the said Chamberlain of that portion of the said railroad known as the "western division," and extending from Portage City aforesaid, to La Crosse, in Wisconsin, the western terminus of said road, for the prices and upon the terms and conditions in said contract expressed, a true copy whereof is annexed to the answer of the said company and marked Schedule D.

That the said Chamberlain entered upon the work contemplated by said contract last mentioned in the month of February thereafter,
716 and continued to prosecute the same under said contract and another agreement supplemental thereto and modifying the said original contract in some particulars, which was entered into between the said Chamberlain and the said company on or about the 30th day of April, A. D. 1857, a true copy of which supplemental contract is annexed to the said answer of the said company and marked Schedule E, until about the 26th day of September last past, when said original and supplemental contract was further modified by a contract or agreement in writing, entered into by and between the said Chamberlain and the said company on that day, a true copy whereof is annexed to the said answer of the said company and marked Schedule F.

And the defendant is informed and believed that the value of the work, labor, and services performed by the said Chamberlain under the said contract and the said contract supplemental thereto, and for ballasting on the western division by the direction of the chief engineer, at the rates and prices stipulated for in said contract, inclusive of what remained to be done by the said Chamberlain to complete the work to New Lisbon, as contemplated by said contract so as aforesaid
717 marked Schedule D, amounted to the sum of one million seventy-six thousand four hundred and fifty dollars, and the nature, character, and particulars of said work appear in the final estimate of the said E. W. Woodward, chief engineer, a true copy whereof is annexed to the said answer of the said company and marked Schedule G, and the payments which have been made thereon truly appear in the general account of the said Chamberlain with the said company, a copy whereof is annexed to the answer aforesaid of said company and marked Schedule H.

That the amount remaining to be done to complete the said railroad to New Lisbon, as aforesaid, according to said contracts as modified, was, as appears by the estimate of the said E. W. Woodward, chief engineer as aforesaid, on the first day of October, A. D. 1857, in value estimated by the rates and prices stipulated in said contracts, the sum of fifty-six thousand five hundred dollars, which sum was deducted in the settlement and adjustment of the accounts between the said company and the said Chamberlain, and was not and is not included in the said judgment so as aforesaid confessed by the said company in favor of the said Chamberlain, a true copy of the said estimate of E. W. Woodward, chief engineer as aforesaid, of the said incomplete work, is annexed to
718 the said answer of the said company and marked Schedule I.

And this defendant is informed and believes, and therefore avers, that the amount of the said judgment so confessed as aforesaid was the amount actually ascertained to be due to the said Chamberlain on the said first day of October, A. D. 1857, from the said company, for work, labor, and services and materials furnished under said contracts, according to the terms, prices, and stipulations therein contained, and for ballasting on the western division as aforesaid.

And this defendant avers, upon information and belief, that at the time of the entry of said judgment the said company was actually indebted to the said Chamberlain in the full amount of said judgment, which sum was so as aforesaid ascertained to be due to him for work, labor and services performed and materials furnished in and about the construction of the said railroad of the said company and for the particulars and items of such indebtedness this defendant prays leave to refer to the schedule hereinbefore named, and asks that the same may be taken to be a part of this his answer.

And this defendant, further answering, says that he does not know and cannot say whether any other person or persons than the
719 said Chamberlain are directly or indirectly interested in said judgment, or whether the said Byron Kilbourn or James Ludington is directly or indirectly therein, though he verily believes that neither the said Kilbourn or the said Ludington has or ever had any interest, direct or indirect, therein; and this defendant expressly says that there is not and never was any secret or other arrangement or understanding on his part, or between himself and any other person or persons, that he should enjoy or share in any way, or at any time, any part of said judgment, if the same should be collected, or in any other event, and he does not believe that there is now or ever was any such arrangement or understanding that the said Kilbourn or Ludington should in any event enjoy or share the said judgment, or any part thereof.

This defendant, further answering, says that he is informed and believes that the La Crosse & Milwaukee Railroad Company, on the 15th day of June, A. D. 1856, was the owner and seized in fee of lots, nine, ten, and eleven in block three, and lots one, two, and three in block forty-seven, in the fifth ward of said city of Milwaukee, subject to some outstanding unpaid taxes, and an interest, or pretended interest,
720 of one James D. Doty therein. That on or about the 8th day of September, A. D. 1855, the said La Crosse & Milwaukee Railroad Company claimed to own and possess lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14 in block 155, in the fourth ward of said city of Milwaukee; $\frac{1}{8}$ of block 157, except lot 8, and $\frac{1}{8}$ of the bayou adjoining the same, in said ward; $\frac{1}{4}$ of lots 8, 9, 16, & 17 in block 158, in said ward; lots 10, 12, 14, 13, and the east $\frac{1}{2}$ of 15 in said block 158, and lots 1 and 4, in block 156, in said ward; that such title as said company then had in and to the above described lots and real estate in the fourth ward of said city it acquired from the Milwaukee, Fond du Lac & Green Bay Railroad Company, under and by virtue of an act to amend an act entitled "An act to incorporate the La Crosse & Milwaukee Railroad Company," approved April 2, 1852, and a contract entered into by and between the said Milwaukee, Fond du Lac & Green Bay Railroad Company and the La Crosse & Milwaukee Railroad Company, under and by virtue of said act, by which the two corporations aforesaid became one consolidated company under the name of the La Crosse and Milwaukee Railroad Company.

That the title to lot 13 in block 158, aforesaid, has entirely failed, and

that this defendant is informed and believes that the titles to lots
721 14 and the east ½ of 15 in block 158, lots 4 & 10 in block 155, aforesaid, have entirely failed, so that the said La Crosse and Milwaukee Railroad Company, as this defendant is informed and believes, never acquired any interest in either of the lots last aforesaid; and the defendant is informed and verily believes that the titles to all of the other lots aforesaid in the fourth ward of said city were and are more or less defective.

And this defendant further says that on the said 8th day of September, A. D. 1855, lot 1 in block 155, aforesaid, was not worth, in his opinion, to exceed the sum of six hundred dollars: that lots five and nine in said block were not then worth to exceed one thousand dollars; that lots thirteen and fourteen in said block were not then worth to exceed eight hundred dollars; that lot six in said block was not then worth more than three hundred and fifty dollars; that lot two in said block was not then worth to exceed four hundred dollars; that lots eight, eleven, and twelve in said block were not then worth more than one thousand and fifty dollars; that lots four and seven in said block were not then worth to exceed five hundred dollars; that ⅛ of block 157, except lot 8 in said block, and ⅛ of the bayou adjoining the same, were not then worth more than one thousand and fifty dollars; that ⅛
722 of lots 8, 9, 16, & 17 in said block 158 were not then worth more than two thousand dollars; that lots 10, 12, 13, 14, and the east half of 15 in said block 158, were not worth to exceed four thousand dollars, subject to the incumbrances thereon and the defective titles thereto; that lot four in said block 156 was not then worth more than three hundred and fifty dollars, and that lot one in said block 156 was not then worth more than one hundred and fifty dollars.

This defendant is informed and believes that the property aforesaid lying in the fourth ward of said city was purchased in the summer of the year 1853, from different persons, by the Milwaukee, Fond du Lac and Green Bay Railroad Company, and was paid for principally in the stock of said company; that this defendant, in estimating the value of said property, has stated the value of each and every parcel thereof to be about the sum which was so as aforesaid paid for the same respectively; and in making his said estimate has had in view the state and condition of the title of said property, the tax titles thereon, and the incumbrances resting against the same; and he verily believes that the valuation which he has placed on said lots and parcels of land is
723 all that the same were, on the said 8th day of September, 1855, worth, considering the then condition of the titles and the incumbrances thereon.

This defendant further says that, in his judgment and opinion, the value of said lots nine, ten, and eleven, in block three, and one, two, and three in block forty-seven, in the fifth ward of said city, on the said fifteenth day of June, A. D. 1856, was respectively as follows, to wit: of lot nine, four thousand dollars; of lot ten, four thousand dollars; of lot eleven, four thousand dollars; and of lots one, two, and three, one thousand dollars each.

The six lots last above named were, as this defendant is informed and believes, purchased in the summer or fall of the year A. D. 1853, by the Milwaukee, Fond du Lac & Green Bay Railroad Company, from Geo. H. Walker, for the sum of fourteen thousand dollars in the stock of said company; and the said La Crosse & Milwaukee Railroad Company acquired title thereto at the same time and in the same manner as it acquired title to the aforesaid lots and property in the fourth ward of

said city. The said Byron Kilbourn, James Ludington, and this defendant were directors of said company while it was so interested as aforesaid in said property.

724 The defendant, further answering, says that the said James Ludington and this defendant were not on the said 15th day of June, or on any other day, to the knowledge or belief of this defendant, appointed a committee, either by the board of directors of said company, or the executive committee thereof, to sell or dispose of said lands, or any part thereof, and that this defendant and the said Ludington did not at any time make a contract of sale, either in writing or by parol, which was afterwards ratified and executed by the said company defendant, agreeing to sell the said lands to the said Charles D. Nash, but the fact is, that on or about the 3rd day of September, A. D. 1855, the said Charles D. Nash submitted a proposition in writing to the president and directors of said company, defendant, to buy all of said property, and offering for the same the sum of twenty-five thousand dollars; ten thousand dollars in the farm mortgage bonds of the company, and fifteen thousand dollars in the full paid stock of the company; that said proposition was considered by the executive committee of the board of directors at a meeting held at the office of said company, on the 7th day of September, A. D. 1855, at which meeting the following members of said committee were present, to wit, Messrs. Judd,

725 Kilbourn, Kneeland, Goodrich, and Townsend, and upon consideration of said proposition, the same was accepted by said commitee by the adoption of a resolution of which the following is a copy, as appears by the record of proceedings of the executive committee aforesaid:

"Resolved, That the proposition of C. D. Nash, submitted in writing, under date of the 3rd inst., for the purchase of property, real estate, in the 4th and 5th wards, be accepted."

That on the 8th day of September, A. D. 1855, in pursuance of the contract so as aforesaid made between the La Crosse & Milwaukee Railroad Company and the said Nash, the said company executed and delivered to the said Nash a quitclaim deed of all the aforesaid property in the fourth ward of the said city of Milwaukee, and received from the said Nash, in payment therefor, the sum of ten thousand dollars in the farm mortgage bonds of said company, and on the same day, to wit, the said 8th day of September, the said company entered into a contract in writing with the said Nash for the sale and conveyance of all of said property in the fifth ward of said city, a copy of which is hereunto annexed and marked Schedule A; and on or about the 14th day of July, A. D. 1856, the said La Crosse & Milwaukee Railroad

726 Company, in pursuance of said contract, executed and delivered to the said Nash a quitclaim deed for all the property last aforesaid.

This defendant, however, says, that prior to the said 14th day of July, to wit, on the 24th day of September, A. D. 1855, this defendant purchased the interest of the said Nash in all said property, and received from him a quitclaim deed of all the property lying in the fourth ward of said city, and an assignment of the contract aforesaid for the conveyance of the property lying in the fifth ward of said city, and on the said 14th day of July, upon the execution and delivery of said deed by said company to the said Nash, this defendant paid over and delivered, and caused to be paid over and delivered as hereinafter stated, to said company fifteen thousand dollars in its full paid stock, and the said Nash on the 15th day of July, A. D. 1856, executed and delivered

to this defendant a quitclaim deed of the property described in said contract, and lying in the fifth ward of said city of Milwaukee. That at and before the time when the said Nash submitted his proposition to the company as aforesaid, for the purchase of the said real estate, the said company was anxious to dispose of the same, and made efforts to sell the said real estate to different individuals, but without
727 effecting a sale thereof, until this defendant and the said Nash arranged and agreed to buy the same, on or about the said 3rd day of September, A. D. 1855, when it was agreed by and between the said Nash and this defendant that the said Nash should make the proposition aforesaid, and if the same was accepted by the said company, that he and this defendant would take and hold the said real estate jointly; and the said Nash did accordingly propose to buy the said real estate, and did finally buy the same as aforesaid, as hereinbefore stated, for the joint account of himself and this defendant, and this defendant furnished the ten thousand dollars of farm mortgage bonds which were paid over and delivered by the said Nash to the said company on the said 8th day of September, A. D. 1855.

And this defendant expressly avers that the sale of the said real estate so as aforesaid made to the said Nash was a bona fide transaction, and that the same was purchased by the said Nash for himself and this defendant in good faith, and, as this defendant verily believes, the consideration paid therefor was all that said property was reasonably worth, and as much, if not more, than could have been obtained for the same, unless the said company would have agreed to perfect the title
728 thereto and convey the same by warranty deed, which the said company was unwilling and refused to do.

This defendant further says that the action of the executive committee hereinbefore set forth, had on the 7th day of September, 1855, accepting the proposition of said Nash to purchase said property, was approved by the board of directors of said company at a quarterly meeting held on the 17th day of October, A. D. 1855, and that the said quit-claim deed, executed by the said Nash on or about the 14th July, 1856, was executed and delivered by order of the executive committee, pursuant to a resolution of said committee adopted on the 11th day of July, A. D. 1856, and that such action of the executive committee was approved by the board of directors of said company at a quarterly meeting thereof held on the seventh day of July, 1856.

This defendant avers that the said company had no use for said real estate; that it was not required for depot grounds or for the other purposes of the said company, and that the interests of the said company required that the same should be disposed of, and the liabilities of the company thereby diminished, and this defendant believes that the interests of the said company were in fact subserved by the disposition
729 so as aforesaid made of the said property; and that no fraud or wrong was intended, and none was in fact done, by such sale. That the said real estate was then incumbered to the amount of about nine thousand dollars; and the same was conveyed by quit-claim deed, subject to such incumbrances, and subject also to such tax titles and other claims or liens as might be outstanding against the same.

This defendant denies that there was any arrangement or agreement, secret, open or otherwise, by which the said Kilbourn and Ludington, or either of them, was to have or take any interest whatever in the lands so as aforesaid purchased; and he expressly avers that said proposition was mad e and the said property purchased for the joint benefit of this defendant and the said Nash, and for no other person or persons;

except that at the time the said Nash made his proposition for the purchase of said property, it was understood between him and this defendant that one Carlisle D. Cook, who was then absent from the city, might have the privilege of meeting with this defendant and said Nash and take a one-third interest therein if he should choose to do so, but, on his return, the said Cook declined to become interested with them
730 in such purchase, and did not become interested therein, and soon after the said purchase the said Nash, on advising with his friends and examining more carefully the titles of said property, was desirous that this defendant should take the entire property, and this defendant did accordingly agree to take the same, and in accordance with such arrangement the said Nash conveyed that part of said property which lies in the fourth ward to this defendant, and assigned to this defendant the contract so as aforesaid entered into with the said company, by written assignment, a copy whereof is hereunto annexed, marked B, on or about the 24th day of September, A. D. 1855.

The conveyance so made as aforesaid, by the said Nash to this defendant, was made under the circumstances, for the consideration, and in the manner aforesaid, and no consideration whatever was paid to the said Nash by this defendant or any other person, to his knowledge, except as aforesaid.

And this defendant, further answering, says that he did on or about the 31st day of October, A. D. 1855, convey to the said James Ludington one undivided one-third of all that part of said property which lies in the fourth ward of said city, and on or about the 12th day of Augus', A. D. 1856, he conveyed to the said Ludington one un-
731 divided third of all that portion of said property which lies in the fifth ward of said city; and that the said James Ludington paid to this defendant therefor the sum of eight thousand six hundred and thirty-three dollars and twenty-six cents; that said sum was paid at the office of the said Ludington, as follows, to wit, five thousand dollars thereof was paid in the full paid stock of said company, one thousand dollars in a farm-mortgage bond of the company, and the remaining sum of two thousand six hundred and thirty-three dollars and twenty-six cents in two promissory notes of the said Ludington.

That this defendant made use of the said farm mortgage bond and promissory notes in his business, as he was in the habit of using other like property, and that the same have not in any way or under any cover or device whatever returned to the said Ludington, or to any person for his benefit, with this exception, that the two promissory notes so as aforesaid made by the said Ludington to this defendant for two thousand six hundred and thirty-three dollars and twenty-six cents of said consideration have been paid, and upon the payment thereof were surrendered to the said Ludington; and the said sum of five thousand dollars in the stock of said company was, about the time when the
732 title of the property so as aforesaid purchased from George H. Walker was perfected in said company, redelivered to the said Ludington, and by him paid over to the said company on the execution of the deed of the company as aforesaid to the said Nash on the 14th day of July, A. D. 1856, or about that time.

And this defendant, further answering, says that he claims to own and believes he does own one undivided third part of said real estate, subject to the incumbrances and defects of title resting against the same, and he believes that the said Ludington claims a like interest therein, but he is not aware and does not believe that the said Kilbourn claims to have or hold any interest whatever therein; that the value of the in-

terest which this defendant claims in said property is, in his opinion, about twenty thousand dollars; that the value of the interest claimed by the said Ludington is, in the opinion of this defendant, about twenty thousand dollars; and this defendant believes that the said Byron Kilbourn claims no interest whatever of any value therein; and he further says that the aggregate value of said lands in their present state and condition is, in his opinion, sixty thousand dollars; that large expenditures have been made thereon since the said company conveyed the
733 same, in improvements, and that the said lands are now worth much more than they would be in the condition they were in at the time when the said company contracted to sell the same as aforesaid.

And this defendant, further answering, says that he is informed and believes and therefore admits that the said La Crosse & Milwaukee Railroad Company did on or about the 30th day of September, A. D. 1857, make and deliver an instrument in writing to the said Freeman, a copy whereof is annexed to the answer of the said company to the said bill of complaint and marked Schedule K, and that the same was executed for the consideration and purposes appearing on the face of said instrument; and that he does not believe that there is any secret arrangement or understanding that any other person than the said Freeman should be interested in or in any way share the profits or avails of said instrument, but he confidently believes that the same was executed for the legitimate and honest purpose appearing on its face and for no other purpose whatever.

And this defendant prays he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MOSES KNEELAND.

H. L. PALMER,
Solicitor for Def't.
BUTLER & BUTTRICK,
Of Counsel.

734 DISTRICT OF WISCONSIN, *ss:*

On this 4th day of December, A. D. 1857, personally appeared before me the above named Moses Kneeland, and made oath that he has heard read the foregoing answer by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

J. P. C. COTTRILL,
U. S. Commissioner, Wisconsin.

SCHEDULE A.

Articles of agreement made this eighth day of September, in the year of our Lord eighteen hundred and fifty-five, between the La Crosse & Milwaukee Railroad Company, party of the first part, and C. D. Nash, party of the second part, witness as follows:

1. Said party of the first part has this day sold to the said party of the second part all their estate, right, and interest in lots nine (9), ten (10), and eleven (11), in block three (3), and lots one (1), two (2), and three (3), in block forty-seven (47), all in the fifth ward of the city of Milwaukee, for the price of fifteen thousand dollars.

2nd. The said party of the second part agrees to pay therefor

735 the said sum of fifteen thousand dollars in full paid shares of the capital stock of the said party of the first part, that is to say, one hundred and fifty shares of said stock of one hundred dollars each, fully paid, to the said party of the first part, upon the determination of a suit in chancery now pending in the circuit court of Milwaukee County, wherein George H. Walker is complainant and the said party of the second part is defendant.

3rd. The said party of the second part agrees to take charge of the said suit in chancery, and to conduct the same with all due diligence to a determination, at his own risk and expense.

4th. Upon the determination of said suit, if there shall be a decree therein for the defendant, the said party of the first part shall, upon payment of the said sum of fifteen thousand dollars as aforesaid, execute and deliver to the said party of the second part a quit-claim deed of conveyance of all their right, title, and interest in the said lots of land, subject to all outstanding titles, equities, liens, and incumbrances, whether arising by grant, tax, tax-sale, or otherwise.

5th. Upon the determination of the said suit, if there shall be a decree therein reinvesting the title to the said lots in the said complainant therein, or decreeing a reconveyance thereof by the said defendant therein, the said party of the first part shall, upon payment of the said sum
736 of fifteen thousand dollars as aforesaid, assign over to the said party of the second part whatever money or securities the said complainant may be decreed to pay or deliver to the said defendant as a condition to such decree.

6. In case of any compromise or adjustment of the subject matter of the said suit between the said complainant therein and the said party of the second part, the said sum of fifteen thousand dollars shall become immediately payable in manner aforesaid.

In witness whereof the said parties have signed and sealed these presents the day and year first above written.

(Signed) STODDARD JUDD,
Pres't of the L. C. & M. R. R. Co.
CHARLES D. NASH.

Sealed & delivered in the presence of—
P. M. JOHNSON.
S. C. JOHNSON.

B.

For and in consideration of the sum of ten thousand dollars, to me in hand paid by Moses Kneeland, of the city of Milwaukee, the receipt whereof is hereby acknowledged, I, Charles D. Nash, of the same place, have sold, assigned, transferred, and set over, and do hereby sell, assign, transfer, and set over unto him, the said Moses Kneeland, all my right, title, interest, and estate in and to the contract or agree-
737 ment hereunto annexed and entered into between the La Crosse & Milwaukee Railroad Company and myself, and bearing date the eighth day of September, A. D. 1855, and in and to all and singular the real estate and other subject matter therein described and set forth:

To have and to hold the same unto him the said Moses Kneeland, his executors and administrators and assigns, but at his sole cost, risk, and expense.

Witness my hand and seal this twenty-fourth day of September, A. D. 1855.

(Signed) CHAS. D. NASH. [L. S.]

In presence of—
E. S. HAGON.
H. L. PALMER.

STATE OF WISCONSIN,
County of Milwaukee, ss:

On this 19th day of October, A. D. 1855, before me, a notary public for said State, residing at the city and county of Milwaukee, personally appeared Charles D. Nash, to me known as the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein named.

(Signed) H. L. PALMER,
Notary Public Mil. Co.

738 *Answer of Jas. Ludington.*

The district court of the United States for the district of Wisconsin. In chancery.

The separate answer of James Ludington, one of the defendants, to the bill of complaint of Newcomb Cleveland, complainant, against this defendant, impleaded with the La Crosse & Milwaukee Railroad Company, Byron Kilbourn, Moses Kneeland, Selah Chamberlain, Charles D. Nash, and De Witt C. Freeman.

This defendant, now and at all times saving and reserving unto himself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereto, or to such parts thereof as he is advised it is material for him to make answer unto, he answers and says:

That he has been informed and believes, and therefore admits, that the said complainant recovered against the said La Crosse & Milwaukee Railroad Company, at the time, for the amount, and in the manner alleged in said bill of complaint, but whether the whole or any part thereof is still due and owing to the said complainant, this defendant has no knowledge, and he leaves the complainant to his proofs in that behalf.

739 And this defendant, further answering, says that he has no knowledge in respect to the said La Crosse & Milwaukee Railroad Company suffering judgment to pass against it as stated in said bill of complaint, nor does he know anything of the cause, claim, contract, debt, or consideration upon which the same was confessed, nor is he able to say whether the said company was on the day of the entry of said judgment indebted to the said Chamberlain or not, and if indebted at all, this defendant does not know, and has not the means of informing himself of the amount of such indebtedness, and he cannot therefore give any of the items or particulars of such indebtedness, if any there are, nor can he state how such indebtedness accrued, if it accrued at all.

This defendant further says that he has no knowledge whatever as to whether there were any transactions or dealings between the said Chamberlain and the said La Crosse & Milwaukee Railroad Company at the time of the entry of said judgment, or at any previous time, nor does he know or can he state what was then or at any other time the state of

accounts between the said company and the said Chamberlain, or what was the state or balance of such transactions, nor has he any knowledge or information of any claim on the part of said company against the said Chamberlain for moneys, bonds, mortgages, stock, or
740 other things of value, or paid to the said Chamberlain by the said company, and he is equally ignorant of the claim of the said Chamberlain against the said company, when or how it accrued or whether any or what part thereof has been paid. This defendant, however, says that he is informed and believes that the said Chamberlain has done for the said company a large amount of work in the construction of its road, and that there have been dealings and transactions between the said company and the said Chamberlain to a very large amount growing out of such work, but the particulars of such work and dealings and transactions this defendant does not know, and he has no means of information in relation thereto.

And this defendant, further answering, says that he does not know whether any other person or persons are directly or indirectly interested in the said judgment so suffered as aforesaid; and he does not know whether the said Byron Kilbourn and Moses Kneeland, or either of them, or any other person has any interest direct or indirect in said judgment, and he is also ignorant of any secret or other arrangement or understanding between the said Kilbourn and Kneeland, or either of them, by which they or either of them should enjoy or share the said judgment, or any part thereof, if the same should be collected.

741 And this defendant expressly avers that he has not, never had, and never expects to have any interest whatever in said judgment, and that there is not now, never was, and this defendant has no expectation that there ever will be, any arrangement or understanding that he should in case of the collection of said judgment, or in any other event, enjoy or share in any way or at any time any part of said judgment, and he explicitly disclaims any interest therein.

And this defendant, further answering, says that he is informed and believes that the said La Crosse & Milwaukee Railroad Company on the 15th day of June, A. D. 1856, was the owner and seized in fee of lots nine, ten, and eleven in block three, and lots one, two, and three in block forty-seven, in the fifth ward of said city of Milwaukee, subject to some outstanding tax-titles, and an interest or pretended interest of one James D. Doty therein; that on or about the 8th day of September, A. D. 1855, the said La Crosse & Milwaukee Railroad Company claimed to own and possess lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14 in block 155; ½ of block 157, except lot 8 therein, and ½ of the bayou adjoining the same; ½ of lots 8, 9, 16, & 17, and lots 10, 12, 13, & 14, and the east half of lot 15 in block 158, and lots 1 and 4 in block 156, all in the fourth ward of said city of Milwaukee; that such title as said
742 company then had in and to the lots last aforesaid, as also such title as it then had in and to the said real estate in the fifth ward of said city hereinbefore described, it acquired from the Milwaukee, Fond du Lac and Green Bay Railroad Company, under and by virtue of "An act to incorporate the La Crosse & Milwaukee Railroad Company," approved April 2, 1852, and a contract entered into by and between the said Milwaukee, Fond du Lac & Green Bay Railroad Company and the La Crosse & Milwaukee Railroad Company under and by virtue of said act, by which the two companies aforesaid became one consolidated company under the name of the La Crosse & Milwaukee Railroad Company.

And this defendant, further answering, says that the title of said

company to said lot thirteen in block 158 has entirely failed, and he is informed and believes that the title to lot 14 and the east half of lot 15 in said block 158 and to lots 4 and 10 in block 155, in the fourth ward of said city of Milwaukee, have also entirely failed.

And this defendant also states on information and belief that the title of said company to all the other lots aforesaid was more or less defective; that on the 8th day of September, A. D. 1855, in the opinion of this defendant, the value of the said lots lying in the fourth ward of the city of Milwaukee subject to the tax-titles, defects of
743 title and other incumbrances thereon, was respectively as follows, to wit: Of lot one in block 155, six hundred dollars; of lots five and nine in said block, one thousand dollars; of lots thirteen and fourteen in said block, eight hundred dollars; of lot six in said block, three hundred and fifty dollars; of lot two in said block, four hundred dollars; of lots eight, eleven, and twelve in said block, one thousand and fifty dollars; of lots four and seven in said block, five hundred dollars; of ½ of block 157, except lot 8 therein and ½ of the bayou adjoining the same, one thousand and fifty dollars; of one-third of lots 8, 9, 16, & 17 in said block 158, two thousand dollars; of lots 10, 12, 13, & 14, and the east half of lot 15 in said block 158, four thousand dollars, subject to the incumbrances and defects of title; of lot four in said block 156, one hundred & fifty dollars.

This defendant is informed, and believes, that the property aforesaid, lying in the fourth ward of said city of Milwaukee, was purchased in the summer and fall of the year A. D. 1853, from various individuals, by the said Milwaukee, Fond du Lac & Green Bay Railroad Company, and was paid for principally in the stock of said company; that this defendant, in estimating the value thereof, has stated the value of each
744 and every parcel of the same at about the sum which was so as aforesaid paid therefor respectively, and in making his said estimate has had in view the state and condition of the titles of said property, the tax titles thereon, and the incumbrances resting against the same; and he verily believes that the valuation which he has placed thereon is all that the same were reasonably worth on the said 8th day of September, A. D. 1855, subject to the then incumbrances and defects of title.

This defendant further says that, in his opinion, the value of said lots nine, ten and eleven, in block three, and one, two and three, in block forty-seven, in the said fifth ward, on the said fifteenth day of June, A. D. 1856, was respectively as follows, to wit, of said lots nine, ten and eleven, four thousand dollars each; and of lots one, two and three, one thousand dollars each.

The six lots last aforesaid were, as this defendant is informed and believes, purchased in the summer or fall of the year A. D. 1853, by the Milwaukee, Fond du Lac & Green Bay Railroad Company from Col. George H. Walker for the sum of fourteen thousand dollars in the stock of said company.

That the said Byron Kilbourn, Moses Kneeland, and this defendant were directors of said company at the time when it was so as aforesaid interested in said property.

745 This defendant, further answering, says that the said Moses Kneeland and this defendant were not on the said 15th day of June, or on any other day, to the knowledge or belief of this defendant, appointed a committee, either by the board of directors of said company or the executive committee thereof, to sell or dispose of said lands, or any part thereof, and that this defendant and the said Kneeland did not

at any time make a contract of sale, either in writing or by parol, which was subsequently ratified and executed by the said company defendant, and agreeing to sell the said lands to the said Charles D. Nash; but this defendant is informed and believes that the fact is, that on or about the third day of September, A. D. 1855, the said Charles D. Nash submitted a proposition in writing to the president and directors of said La Crosse & Milwaukee Railroad Company to buy all of said property, offering for the same the sum of twenty-five thousand dollars—ten thousand dollars in the farm-mortgage bonds of the company and fifteen thousand dollars in the full-paid stock of the company

That said proposition was considered by the executive committee of the board of directors at a meeting held at the office of the company on the 7th day of September, A. D. 1855, at which meeting the following members of said committee were present, to wit, Messrs. Judd,
746 Kilbourn, Kneeland, Goodrich, & Townsend; and upon consultation of said proposition, the same was accepted by said committee, by the adoption of a resolution of which the following is a copy:

"Resolved, that the proposition of C. D. Nash, submitted in writing under date of the 3rd inst., for the purchase of property, real estate, in the 4th & 5th wards, be accepted."

That on the eighth day of September, A. D. 1855, in pursuance of the contract so as aforesaid made between the La Crosse & Milwaukee Railroad Company and the said Nash, the said company executed and delivered to the said Nash a quitclaim deed of all the aforesaid property in the fourth ward of said city of Milwaukee, and received from the said Nash in payment therefor the sum of ten thousand dollars, in the farm-mortgage bonds of said company; and on the same day, to wit, on the said 8th day of September, the said company entered into a contract, in writing, with the said Nash for the sale and conveyance of all of said property in the fifth ward of said city, a copy of which said contract is hereunto annexed and marked Schedule A; and on or about the 14th day of July, A. D. 1856, the said La Crosse & Milwaukee Railroad Company, in pursuance of said contract, executed and delivered to the said Nash a quitclaim deed for all the property last aforesaid.

747 This defendant further says that the action of the executive committee hereinbefore set forth, had on the 7th day of September, A. D. 1855, accepting the proposition of the said Nash to purchase said property, was approved by the board of directors of said company at a quarterly meeting of said board, held on the seventeenth day of October, A. D. 1855; and that the said quitclaim deed executed to the said Nash on or about the 14th day of July, A. D. 1856, was executed and delivered by order of the executive committee, and pursuant to a resolution of said committee adopted on the 11th day of July, A. D. 1856, and that such action of the executive committee was approved by the board of directors of said company at a quarterly meeting thereof held on the sixteenth day of July, A. D. 1856, as appears by the records of proceedings of the said board of directors.

And this defendant, further answering, says that he is informed and believes that on or about the 24th day of September, A. D. 1855, the said Moses Kneeland purchased the interest of the said Nash in all of said property, and received from the said Nash a quitclaim deed of all of said property lying in the fourth ward of said city, and an assignment of the contract aforesaid for the sale and conveyance of the
748 said property in the fifth ward of said city, and that the said Kneeland, on the said 14th day of July, upon the execution and

delivery of the deed by said company to the said Nash, the said Kneeland having theretofore acquired the title of said Nash, paid over, and caused to be paid over and delivered to the said company fifteen thousand dollars, in its full paid stock; and that the said Nash, on the 18th day of July, A. D. 1856, executed and delivered to the said Kneeland a quitclaim deed of the property described in said contract.

This defendant is informed and believes that from the time when the said company acquired title to the said real estate as aforesaid, it was anxious to dispose of the same, and made frequent efforts to effect a sale thereof for the purpose of diminishing its liabilities and relieving itself of anxiety in relation to the incumbrances upon the same and the defective titles thereto.

And this defendant believes that the sale of said property to the said Nash was made in good faith, and for no purpose of fraud whatever; that the price paid therefor was all that the same was reasonably worth, and as much as could have been obtained therefor from any other person, if sold in a body, and that the property being such as the company did not require and could not use for the purposes of its business and road, the interests and good of said company were consulted and subserved by said sale.

749 This defendant expressly denies that it was directly or indirectly understood at the time of such sale that the said Nash should at any time thereafter convey any part of said property to this defendant; but whether it was understood that any part thereof should at any time be conveyed by the said Nash to the said Kilbourn or the said Kneeland, this defendant does not know and cannot say.

This defendant is informed and believes that the said Nash did convey all of said property to the said Kneeland, as hereinbefore stated, but upon what precise terms and for what precise sum or consideration this defendant is not advised and cannot say, nor does this defendant know what the said Nash did with the consideration paid to him by the said Kneeland for such conveyance and what disposition he made of the same, nor whether the same did or not under some cover or device return to the said Kneeland or some other person for his use. And this defendant further says that he does not know whether any consideration was paid to the said Nash, and if so, whether it was all paid by the said Kneeland or not, or how the same was paid; but this defendant expressly denies that any part of the same was paid by him directly or indirectly.

750 And this defendant, further answering, says that the said Moses Kneeland did, on or about the 31st day of October, A. D. 1855, convey to this defendant one undivided one-third part of said real estate in the 4th ward of said city, and on or about the 12th day of August, A. D. 1856, he conveyed to this defendant one undivided third of all that part of said real estate which is situated in the fifth ward of said city, and that this defendant paid to the said Moses Kneeland therefor the sum of eight thousand six hundred and thirty-three dollars and twenty-six cents; that said sum was paid at the office of this defendant as follows, to wit, five thousand dollars thereof was paid in the full-paid stock of said company; one thousand dollars in a farm mortgage bond of said company, and the remaining sum of two thousand six hundred and thirty-three dollars and twenty-six cents in two promissory notes of this defendant's; but what use the said Kneeland made of the same this defendant does not know and cannot say, except that the said Kneeland returned to this defendant the sum of five thousand dollars in

stock, and this defendant paid said sum over directly to the company on the title to the property in the fifth ward being perfected in the company, and the conveyance of said property by the company to the said Nash being executed, on or about the 14th day of July, A. D.
751 1856; and the said promissory notes were afterwards paid by this defendant, and upon the payment thereof were surrendered to him by the said Kneeland.

And this defendant claims to own one undivided third part of said real estate, subject to the incumbrance and defects of title resting against the same, and he is informed and believes that the said Kneeland claims a like interest therein, but he is not aware and does not believe that the said Kilbourn claims to hold or has any interest whatever therein; that the value of the interest which this defendant claims in said property is, in his opinion, about twenty thousand dollars, and the value of the interest claimed by the said Kneeland is about the same sum, and this defendant believes that the said Kilbourn claims no valuable interest therein whatever. And he further says that the aggregate value of said lands in their present state is, in his opinion, sixty thousand dollars; that large expenditures have been made thereon since the said company parted with its title thereto, in making valuable improvements thereon, and that the said lands are now worth much more than they would be in the condition they were in at the time when the said company contracted to sell the same as aforesaid.

752 And this defendant having fully answered said bill, prays that he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JAMES LUDINGTON.

BUTLER, BUTTRICK & COTTRILL, *Sol'rs.*
A. R. R. BUTLER, *Counsel.*

DISTRICT OF WISCONSIN, *ss:*

On this 4th day of December, A. D. 1857, personally appeared before me the above-named James Ludington, and made oath that he has heard read the foregoing answer by him subscribed, and knows the contents thereof, and that the same is true, except as to those matters which are therein stated to be upon his information and belief, and as to those matters he believes it to be true.

J. P. C. COTTRILL,
U. S. Commissioner, Wisconsin.

Articles of agreement made this eighth day of September, in the year eighteen hundred and fifty-five, between the La Crosse & Milwaukee Railroad Company, party of the first part, and C. D. Nash, party of the second part, witness as follows:

1st. Said party of the first part has this day sold to the said party of the second part all their estate, right, and interest in lots nine (9), ten (10), and eleven (11), in block three (3), and lots one (1), two
753 (2), and three (3), in block forty-seven (47), all in the fifth ward of the city of Milwaukee, for the price of fifteen thousand dollars.

2d. The said party of the second part agrees to pay therefor the said sum of fifteen thousand dollars in full-paid shares of the capital stock of the said party of the first part, that is to say, one hundred and fifty shares of said stock of one hundred dollars each, fully paid, to the said party of the first part upon the determination of a suit in chancery now pending in the circuit court of Milwaukee County,

wherein George H. Walker is complainant and the said party of the first part is defendant.

3rd. The said party of the second part agrees to take charge of the said suit in chancery, and to conduct the same with all due diligence to a determination, at his own risk and expense.

4th. Upon the determination of the said suit, if there shall be a decree therein for the defendant, the said party of the first part shall, upon payment of the said sum of fifteen thousand dollars as aforesaid, execute and deliver to the said party of the second part a quitclaim deed of conveyance of all their right, title, and interest in the said lots of land, subject to all outstanding titles, equities, liens, and incumbrances, whether arising by grant, tax, tax-sale, or otherwise.

754 5. Upon the determination of the said suit, if there shall be a decree therein reinvesting the title to the said lots in the said complainant therein, or decreeing a reconveyance thereof by the said defendant therein, the said party of the first part shall, upon payment of the said sum of fifteen thousand dollars as aforesaid, assign over to the said party of the second part whatever money or securities the said complainant may be decreed to pay or deliver to the said defendant as a condition to such decree.

6. In case of any compromise or adjustment of the subject-matter of the said suit between the said complainants therein and the said party of the second part, the said sum of fifteen thousand dollars shall become immediately payable in manner aforesaid.

In witness whereof the said parties have signed and sealed these presents, the day and year first above written.

(Signed) STODDARD JUDD,
Pres't of the L. C. & M. R. R. Co.
CHARLES D. NASH.

Sealed & delivered in presence of—
P. M. JOHNSON.
S. C. JOHNSON.

755 *Answer of Byron Kilbourn.*

The district court of the United States for the district of Wisconsin.
In equity.

The separate answer of Byron Kilbourn, one of the defendants, to the bill of complaint of Newcomb Cleveland, complainant, against this defendant, impleaded with the La Crosse & Milwaukee Railroad Company, Moses Kneeland, James Ludington, Selah Chamberlain, Charles D. Nash, and D. C. Freeman.

This defendant, now and at all times saving and reserving to himself all benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is material or necessary for him to answer unto, he makes , and says:

That this defendant has heard read the answer of the La Crosse & Milwaukee Railroad Company to the bill of complaint in this cause, and knows the contents thereof, and this defendant hereby adopts the said answer of the said La Crosse & Milwaukee Railroad Company filed herein, and prays that the same may be taken as this defendant's answer to the interrogatories in the said bill of complaint contained, and

numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 17, & 18, and that the
756 same may have the same effect as and for the answer of this defendant to said interrogatories as if the same was here again repeated at length.

This defendant, further answering, says, in answer to the interrogation in said bill contained and numbered 14, that this defendant has no knowledge, information, or belief whether any consideration was paid to said Nash, nor whether it was all paid by the said Kneeland, nor whether said Ludington paid any part thereof or contributed in any manner thereto; and he leaves the said complainant to his proof in that regard, and this defendant denies that he, this defendant, paid any part of the consideration, if any, paid to the said Nash, or contributed in any manner thereto.

This defendant further says, in answer to the interrogatory in said bill of complaint contained and numbered 15, that he has been informed and believes that said Moses Kneeland did convey to said James Ludington one-third part of the property aforesaid, but this defendant is not informed in relation to the consideration paid by the said Ludington to the said Kneeland therefor, or the time or manner of such payment, nor in relation to what the said Kneeland did therewith or how he disposed of the same, or whether the same in any way or under some cover or device returned to the said Ludington or to some other person for
757 his benefit, except what he has derived from reading the statements of the said Kneeland and Ludington in relation thereto, contained in the answer of the said Kneeland and Ludington respectively in this case, and which statements this defendant has no reason to doubt, and believes to be true.

This defendant, in answer to the interrogations in the said complainant's bill of complaint contained and numbered 16, says that this defendant does not own nor claim to own or to be interested in the said lands or any part thereof, and he does not claim to have or hold any part or any interest of or in the said lands; and this defendant says he is informed and believes that the said Ludington and Kneeland claim to own, each of them, one-third of the said lands. That this defendant has not for two or three years past had any occasion to enquire into the value of lots in that portion of the city in which said lands are situated; that he has been for much of the time out of the city, and the business in which he has been engaged has been of such a character that he has had little opportunity to become acquainted with the value of said lands, and that he does not feel himself competent to form a correct or reliable opinion of the value of the said lands in the aggregate, or of the respective interests of the said Kneeland and Ludington therein; that
758 this defendant has read the statement of the said Kneeland and Ludington in relation to the value of said lands contained in their respective answers in this case, which statement he believes to be true.

Without that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, named or denied, is true to the knowledge of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove as this honorable cour-

shall direct, and humbly prays to be hence dismissed with his reasonat ble costs and charges in that behalf most wrongfully sustained.

BYRON KILBOURN.

H. L. PALMER,
Solicitor for Def't.
BUTLER, BUTTRICK & COTTRILL,
Of Counsel.

DISTRICT OF WISCONSIN, *ss:*

On this fourteenth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, before me personally appeared the above-named Byron Kilbourn and made oath that he has read the foregoing answer by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

J. P. C. COTTRILL,
U. S. Commissioner, Wisconsin.

759 *Answer of E. Mariner.*

District court of the United States, district of Wisconsin.

The separate answer of Ephraim Mariner to the bill of complaint of Newcomb Cleveland against the La Crosse & Milwaukee Railroad Company, Ephraim and others.

This defendant, for answer, admits the recovery of said judgment and issuing of execution thereon; and further, that the said Charles D. Nash did purchase of the defendant, The La Crosse & Milwaukee Railroad Company, the lots in the fourth and fifth wards at the time set forth in the bill of complaint.

This defendant, further answering, admits that he is a purchaser and is now the owner of one-third undivided of said premises, and that he claims title through such conveyance to said Nash, and other conveyances which have been from time to time obtained by Kneeland, Ludington and this defendant perfecting the title of said premises in themselves.

This defendant, further answering, admits that the said Kneeland, Kilbourn and Ludington were members of the executive committee and directors of said company at the time of such sale.

This defendant, further answering, says he has no knowledge, information or belief as to whether the said Nash purchased said prop-
760 erty for the benefit of Kneeland and Ludington except what he has from an inspection of the proofs in this cause and the complaint therein.

That this defendant purchased one-half of his said interest and paid for the same with the information and belief that the said Nash purchased said premises for the benefit of himself and one C. D. Cook, now deceased, and for the benefit of himself and said Cook, and that said Cooke paid the purchase price to the La Crosse & Milwaukee Railroad Company, and that he, said Nash, and said Cook were alone interested in such purchase at the time it was made.

That after such purchase was made, said Cook and said Nash had become dissatisfied therewith, and said Kneeland purchased said premises of said Nash & Cook under an agreement that said Ludington should have an interest in such purchase, and as such purchaser claims the

title of a purchase in good faith for a valuable consideration paid without notice of any matter set up in said bill to impeach the title of said Ludington, Kneeland and this defendant.

This defendant, further answering, admits that he purchased the remaining one-half of his interest in these premises after having inspected the bill of complaint in this cause, and he claims that as against the said complainant that he has a full, perfect and sufficient title
761 thereto to the extent of the title of said company. That if the said Kneeland has perpetrated a legal fraud upon said company in being a purchaser of said property when his duty was to sell, and for the best price, for the company, that it is a matter solely for the consideration of said company whether such sale shall be vacated; that the right of said company is no more a subject of sale by deed of the company or by a receiver of this court than any damages yet unliquidated which the company might claim for any other fraud which might be perpetrated upon it; and he further shows that the said company, with full knowledge of all the facts set forth in the complaint, has confirmed such sale.

This defendant further shows that he has expended, in common with the other defendants, a large sum of money in improvements and paying taxes upon said premises, and in perfecting the title thereto, and that the title thereto is still imperfect. That he is willing that the court order the whole of said premises, as well so much as he is entitled to as a bona fide purchaser as the remaining interest, to be put up at auction, under the direction of a receiver of this court, at the price which these defendants have paid therefor, and the cost of the improvements thereon, with interest, and sold, and that the surplus be applied upon
762 the extinguishment of the complainants' debt.

E. MARINER,
In person.

DISTRICT OF WISCONSIN, *ss:*

This 9th day of March, before me came Ephraim Mariner, and made oath that he had read the foregoing answer by him subscribed, and that the same was true to the best of his knowledge, information and belief.

J. M. MILLER,
Clerk, &c.

763 *Deposition of Alexander Mitchell.*

SEPTEMBER 15, 1873.

N. S. Murphey, of counsel, appeared for the compl't; John W. Cary, of counsel, appeared for the def't, The Mil. & St. P. R. R. Co.

ALEXANDER MITCHELL, being duly sworn on behalf of the def't, The Milwaukee and St. Paul Railway, testified:

Q. You are the president of the Milwaukee and St. Paul Company?

A. Yes; and have been since July, 1865.

Q. Prior to that time, and during the years '63 and '64, were you a director of the company?

A. I think I was.

Q. Was you acquainted with the property purchased by that company in 1864 from Moses Kneeland or his estate, and James Ludington and Ephraim Mariner, situated in the 4th & 5th wards of the city of Milwaukee?

A. I know generally of the property.

Q. Were you engaged in the purchase of it, and conversant with the matter, and the price paid at the time it took place by the company?

A. Yes, I was.

Q. Do you recollect the price paid for that property?

A. I recollect about the price paid. The company bought a good deal of property aside from what it bought of Kneeland, Ludington, and Mariner, and the Kneeland estate was settled separately, and I think the others were paid in bonds. I acted for the company, and was the party authorized to settle, and paid when the title was certified
764 to me as satisfactory. The price of the property purchased of Kneeland, Ludington and Mariner was between $50,000 & $60,000.

Q. You know the property that is in controversy in this suit?

A. I know what it is. I could not now locate the lots, but knew at the time, and my judgment was consulted at the time as to its value, and I passed my judgment upon it.

Q. Was the price paid by the company at that time, in your judgment at that time, a fair offer of the property?

(Objected to as irrelevant, incompetent, and immaterial.)

A. I considered that the company were paying the full value of the property at the time.

Q. You say you were the person authorized to make the payment when the title was reported satisfactory?

A. I was.

Q. Did the company contract for, and were you only to receive and pay for a perfect title to the property?

A. That was the theory upon which the company acted, and it was only upon that basis that I was to pay for it.

Q. Was any one employed to examine and certify the title to you?

765 A. Yes; Finches, Lynde and Miller were the parties upon whose certificate I was to pay.

Q. Did you receive their certificate or statement that the title was correct before making the payment?

(Objected to, because the certificate would be the best evidence.)

A. I made no payment without the abstract that the title was satisfactory, or a written statement from Finches, Lynde and Miller that the title was satisfactory or safe. I did have an abstract or written statement, and may have it now. I will look for them, and if I can find them, will produce them. If they are not in my possession, they must be in the hands of the attorney for the company, Mr. J. W. Cary.

Q. Was the title to the whole of this property that you paid for certified to you as correct before you paid for it?

A. I am quite confident that was the case.

Q. Do you suppose, and did the company suppose at the time, that they were getting a perfect title to the property?

(Objected to, irrelevant, incompetent, and immaterial.)

A. We certainly did.

Q. This property now constitutes a part of the so-called Union Depot grounds?

A. It does.

Q. Have large improvements been made upon it?

766 A. Yes; the lots have been filled and buildings have been erected upon it.

Q. Did you know at the time of this purchase that the complainants in this case had any claim whatever upon this property?

A. No; I did not.

Q. Or did any member of the St. Paul Railroad Company know, that you know of?

A. I am not aware that any member did.

Cross-examination:

Q. Did you have any directions from the company in respect to the kind of deed or deeds that you were to take from these 3 parties, Kneeland, Ludington, and Mariner, as respects a warranty or quitclaim deed?

A. I have no recollection that I had, or that any directions were given.

Q. Do you remember the kind of deeds Mariner and Ludington gave?

A. I do not.

Q. You say you purchased or intended to purchase a perfect title?

A. Yes.

Q. What was the number of tax certificates and tax titles standing out against this property?

A. I have no recollection.

Q. The sellers were to get them up?

767 A. I don't recollect the details. I know Mr. Miller certified the title was satisfactory, but I should naturally expect that these tax-titles would have been attended to at the time.

Q. The $54,000 paid for this property was in equal proportions to the estate of Kneeland, to Mariner and to Ludington?

A. I don't recollect, but whatever it was it went to these three parties.

Q. Mr. A. Finch was a director of the St. Paul Railroad Company for the first year following the organization of the company?

A. I think he was.

Q. You have not seen his testimony in this case?

A. I have not.

Q. He speaks of having carried a proposition on behalf of the company to Mess. Graham and Scott prior to these sales from these persons to the company for the purchase by the St. Paul Company of the judgment upon which this bill is filed, and in settlement of this suit do; you now recall any recollection of that circumstance?

A. No; but I have no doubt Mr. Finch was correct as to the purchase of the judgment, but it had no bearing upon these lots. It was about the eastern division of the La Crosse Railroad.

Q. At that time, as the record shows, this suit was pending,

768 which disclosed, and now discloses, the existence of a lien upon a fi. fa. issued upon this judgment upon these lots subsequently conveyed by these three parties to the St. Paul Railway Company; and if the proposition which Mr. Finch carried involved the purchase of the judgment and the settlement of this suit, then would you not be mistaken in respect to the proposition and the legal effect of that proposition?

A. I don't think I am mistaken. Of course I cannot tell what the legal effect might be; but, according to my understanding, the proposition only had bearing as to its effect upon the eastern division of the La Crosse Railroad Company. I am confirmed in that view by the fact that since the settlement of the title to the eastern division of the La Crosse Railroad Company there has been no desire to purchase that judgment.

Q. When you speak now of a desire to purchase the judgment do you

not mean by that your present personal recollection of what you desired?

A. Well, Mr. Graham did apply to me to get some settlement of that judgment, and I have brought it before the board, but they have declined to entertain any proposition since the settlement of the title to the eastern division of the old La Crosse Railroad Company.

Q. When did Graham first speak to you about this?

A. I cannot tell.

769 Q. When did you first know of the existence of Graham's judgment—about when?

A. I cannot state. I presume I knew about it very soon after I became connected with the Milwaukee and St. Paul Railroad, and I think I was elected director by the company in June, 1863.

Q. When did you first know of the existence of this suit?

A. I supposed I was informed of it very soon after it was commenced. I mean this suit in which I am testifying—I mean the suit commenced by the filing of this bill. I mean to say I did not know about it until the Milwaukee and St. Paul Railway Company were brought into it by amendment. That was the first I knew about it personally. I did know personally of the judgment, but knew nothing of the levy or this equity suit to enforce it.

Q. If you knew of the existence of the judgment against the La Crosse Railroad Company at the time you say you knew that fact, did you not know that the effect of a judgment against a party was to constitute a lien upon his property?

A. I knew it was so with reference to individuals.

Q. Did you not suppose it was the same with respect to corporations?

A. I supposed it would be the same as to property standing in the name of the corporation and owned by it.

770 Q. Did you not then suppose, and do you not now suppose, that such a judgment would be a lien in equity or otherwise upon real estate fraudulently conveyed by the judgment debtor to a third party, with knowledge of such frauds on the part of the debtor?

(Objected to as irrelevant, incompetent, and immaterial.)

A. It might be, but it is a legal question which I cannot answer from want of knowledge as to the law, and I have no definite opinion about it. I presume that any party guilty of fraud cannot occupy the position of an innocent party.

Q. Did you not have a general knowledge that the lots in dispute here was at one time the property of the La Crosse Railroad Company?

A. I think I knew that the lots had been in some litigation between Mr. Cleveland and the La Crosse Railroad Company, but I had no knowledge what the litigation was, and I think I had heard that the lots was at one time the property of the La Crosse Railroad Company.

Q. Had you not also heard that it was claimed that these lots had been conveyed or sold by the La Crosse Railroad Company to Mr. C. D. Nash, in fact, for the benefit and use of Moses Kneeland, or of Moses Kneeland or other parties?

771 A. I may have heard, but I don't recollect. I do not think I ever heard Mr. Nash's name in connection with the property, but have Kneeland and Ludington.

Q. You mean you had heard of Kneeland and Ludington's names in connection with the purchase?

A. Yes; and very likely Nash's; but it has passed from my mind.

Q. You have stated that it was also claimed, did you not, that there was something fraudulent about it, not a purchase in good faith?

(Objected to as irrelevant, incompetent, and immaterial.)

A. I was told, I believe, that some creditors of the La Crosse Railroad Company had attempted to reach the property; I do not know the grounds, but presume it was because illegally transferred.

Q. Did you understand that the creditors of La Crosse R. R. Co., among them Cleveland, were claiming to reach that property as having been fraudulently disposed of by the La Crosse Company?

(Objected to as irrelevant, immaterial and incompetent, and because witness has not said that Cleveland was attacking it.)

A. I heard of Cleveland attempting to reach that property, I do not think I heard of any one else. I do not know the grounds, but think it was fraud; but I got the impression that that suit was wiped
772 out. I thought if that had been wrong it had been corrected. I supposed his suit was fraud; that the company had not the right to convey property, or that there was something wrong in the action of the directors.

Q. Did you not also understand that it was contended that Kneeland and Ludington at the time of the transfer of this property by the La Crosse Railroad Company to them and Nash, were officers of the La Crosse Company and had been fraudulently dealing for their own interests on the property of the company?

(Objected to as irrelevant, incompetent, and immaterial.)

A. I understood that Kneeland and Cleveland were directors, but upon what terms this property was claimed I do not know, but I was of the impression that was one ground that he was attacking in the Cleveland case.

Q. You knew of the insolvency of the La Crosse Railroad Company in 1857?

A. I was abroad in 1857, and it became soon after that insolvent, so I understood. It was my general knowledge.

Q. How long have you known Graham?

A. 10 or 15 years.

Q. You knew about the time of the circumstance under which in a general way that the liability incurred upon which these judgments were brought?

773 A. I did not.

Q. This liability grew out of work done by Graham on the Madison and Watertown Railroad; do you know about that work?

A. I think I may have some knowledge about it, as Graham and Scott were employed as contractors on that railroad.

Q. Did you not have frequent conversations with Graham upon the subject of his claim originally against the Milwaukee and Watertown Railroad, later against the La Crosse Railroad Company, out of which this judgment arose, between the years 1857 and 1864, and didn't Graham inform you in a general way the nature and character of his claim?

A. I do not know that Graham applied to me concerning his claim until I was connected with the St. Paul Railroad. I was never connected with the Watertown & Madison Railway Co. I was connected with the Milwaukee and Watertown Railroad Company. It was considered that this judgment was a lien upon the eastern division of the La Crosse Railroad Company.

Q. When was the Cleveland suit commenced and when ended?

A. I cannot recollect; I suppose '58 or '59 it was going on.

774 Q. Did you understand that that matter was settled prior to the time that the St. Paul Company became the purchasers?

A. Yes.

Q. Was there ever any proposition, to your knowledge, by the company to Graham, or by Graham to this company, to settle this claim?
A. No; not as to any lien on these lots.

Redirect-examination:

Q. When did you first know of the existence of this suit by Graham and Scott to enforce their levy upon these lots; and when did you first know of the existence of any such levy?
A. I know I got information from Mr. Cary at the time the St. Paul Company was made a party to this suit.
Q. When Graham called on you did he at any time make any claim against the St. Paul Railroad Company as having a lien upon these lots or any claim upon them?
A. Not that I recollect.
Q. What was the interest he claimed against the St. Paul Railroad Company; did he claim he had any claim against the St. Paul Company on these lots?
A. No; not any claim on these lots.

775 Recross-examination:

Q. But there was a proposition made by the company to Graham to buy the judgment upon which this bill is filed?
A. Yes; so I have stated.
Q. Who were at that time the attorneys of the St. Paul Railroad Company?
A. Finches, Lynde and Miller, or John W. Cary; I don't know but both were.
Q. Is it not quite probable that in the multiplicity of your own business cares and the litigation growing out of the old La Crosse Railroad Company, and the organization of the St. Paul Company, that you may have heard of the existence of this suit between January, 1860, and September, 1868, when you say Mr. Cary informed you of it, and that the fact may have escaped your recollection?
A. I don't think so. I know if I had heard of it since my connection with the St. Paul I should have recollected it.
Q. There was a space of 3 years from June, '60 to June, '33, when you were not connected with the St. Paul Company, and indeed before its existence; may you not have heard of this suit during that period and have forgotten it?
(Objected to as irrelevant, incompetent, and immaterial.)
776 A. My impression is, I never heard of it. I was during that period very little connected with railroad companies.

On the witness returning to sign his deposition after it had been written out he adds: I have looked for the abstracts mentioned in my deposition, but have been unable to find them.

ALEX. MITCHELL.

Exam'd reduced to writing and after being read over by him, is this day subscribed by him, January 1, 1874.

FR. BLOODGOOD,
Register in Bankruptcy.

777 Before the examiner, Milwaukee, September 23, 1873.

Present, N. S. Murphey, of counsel for the complainants, E. Mariner, of counsel for the defendants, &c.

LEVI BURNELL called by the defendants, and being first duly sworn, says:

778 Q. In Sept., 1855, and for some time previous thereto, were you the secretary of the La Crosse and Milwaukee Railroad Company?

A. I was.

Q. Is the book here produced the journal of that company?

A. It is.

Q. Do you remember the La Crosse and Mil. R. R. Co. selling to C. D. Nash some lots in the 4th ward of this city?

A. I have no recollection of the transaction.

Q. Will you turn to the date of Sept. 8, 1855, of your journal, and see if you can recall the same? That is, recall to your recollection such a sale. The journal I refer to is the journal of the La Crosse and Mil. R. R. Co. now here.

NOTE.—The witness does as directed, and answers.

A. The company at that date alienated real estate for the following consideration, that is, two contracts of C. D. Nash, one to pay $15,000 on the termination of a suit with G. H. Walker and the other to pay two notes of the Milwaukee, Fond du Lac and Green Bay R. R. Co. of the sums of $4,000.00 and $800.00 respectively, the latter payable in 1856, the former in 1858. At the same date the company received farm mortgage bonds No. 274, $1,000.00, No. 400, $500.00, No.
779 486, $500.00, No. 494, $1,000.00, No. 495, $1,000.00, No. 496, $1,000.00, No. 577, $2,000.00, No. 588, $1,500.00, No. 589, $1,500.00; total $10,000.00, in farm mortgage bonds; grand total $29,800.00.

Q. Is that entry in your handwriting?

A. Yes.

Q. Are you able to say for what real estate the company rec'd those contracts and these farm mortgages?

A. I cannot. It don't express it in the entry. It was a transaction outside of what I had to do with, and I made such entries as would show what effects came into my possession.

Q. As secretary of the co. at that time, were you the custodian of that class of securities?

A. I was the nominal custodian, and had them under my lock and key, but I was not the only person that had access to them.

Q. What I want to know is who kept the securities of the co.?

A. They were in my hands as secretary.

Q. What farm mortgage bonds were those?

A. The La Crosse and Milwaukee farm mortgage bonds. There were no other that I made entries of.

Q. Now they had once belonged to the L. C. & Mil. R. R. Co., had they not?

A. They were bonds that had been regularly issued by that co., and passed out always for some consideration.

780 Q. Look at an entry in this journal of the company—the same journal in page 306, under date of July 23, 1855—and see if you can say to whom the co. sold these bonds—Nos. 577, 588, & 589—and see for what consideration.

NOTE.—Compl'ts' counsel objects, and did at the proper time object to this question and all the preceding questions propounded to this witness as to what this book shows, on the ground that the same is incompetent, irrelevant, and immaterial, and to the proof of the alleged negotiation of any of said bonds, of the consideration, or persons to whom negotiated, for like reasons.

A. It appears that those bonds pass'd from the co. as paym't on a

bill payable of this co.—bill No. 73 —to whom is not expressed in the entry, but the inference from the entry is that it was to C. D. Cooke, as the holder of bill payable No 73. It is possible, however, that since C. D. Cooke held these bonds for the co. in trust, and the co. held his receipt for the same, that they were withdrawn from him and paid on this note, No. 73, to some one else holding this note bill payable 73, though I don't think that was the fact. I am satisfied myself that C. D. Cooke held it (the note), but the other thing is possible, and I have no
781 recollection of the transaction aside from this entry.

Q. Is it not probable, from the entry, that Mr. Cooke held those securities as collateral to that note, B. P., No. 73?

(Objected to as before.)

A. I should say that it is probable.

Q. Look at page 225, of the same journal, and say to whom the co. sold bonds Nos. 274, 400, 486, 494, 495, & 496, and for what consideration.

A. The company exchanged these securities for other securities of the same class with Byron Kilbourn.

(Question and ans. in due time objected to for the same reason as before.)

Q. How was this journal kept as to the time of making the entries?

A. The transactions cannot be entered at the same moment that they are made, but were entered as soon as they were reported to me or came to my knowledge in this the daily journal of the co. This journal is the book of original entries of the daily business of the company, and all the entries I have referred to are in my own handwriting.

Q. What recollection have you of these transactions aside from these entries?

A. None whatever.

782 Q. But all of these entries are touching securities of which you were the custodian of the company?

A. Yes, sir.

Q. Are the entries in the book, so far as you know anything about them, just and true?

A. They are all true, so far as made while I was secretary.

Cross examination by Mr. MURPHEY:

Q. Who has had possession of this journal, so far as you know, within the last ten years?

A. I don't know; I have seen it several times in Mr. Mariner's possession; but whether he has had it continuously, I don't know.

Q. This first entry here, that to which your attention was first called in regard to the sale of lands to Nash, you have no recollection of the transaction except from the entry itself?

A. I have not.

Q. What advantage would the production of the ledger be by way of throwing light on the transactions to which you have referred?

A. It might refer to an earlier entry, which would more fully explain the reason why these securities were first passed by the co. into that a/c, the a/c of securities in trust.

Q. Can you tell from this entry, on page 306, what the bonds there numbered were put into Mr. Cook's hands for?

783 A. I cannot.

Q. May they not have been put in his hands as collateral security for this bill No. 73?

A. Possibly.

Q. Can you tell to whom this bill No. 73 was made payable?

A. I cannot. If I had the ledger I probably could; the bill-book would show. I could not answer from recollection who was president of the co. in 1855?

Q. In the entry, on page 225, where you say it appears that certain real-estate bonds were exchanged with Byron Kilbourn for other securities of the same class, what kind of bonds were these?

A. What was known as farm-mortgage bonds, being bonds of the co., with notes of farmers and mortgages on farms for same am't attached as collateral security. The company, to my knowledge, never negotiated a note and mortgage on a farm without attaching their own bond to it of like amount.

Q. Do you know what the object or purpose was of this exchange of bonds between Kilbourn and the co.?

A. I can't recollect.

Q. Have you lately spent much time in looking through this journal?

784 A. No.

Q. Do you know of any other entries in this journal in reference to the bonds the nos. of which you have given other than you have referred to to-day?

A. I have known, because I made all the entries. I can't now recall any other entries; my attention has been called to all I have testified to.

Q. When did you last see the ledger belonging to this journal?

A. Years gone by. I may have seen it since I was sec'y, but I can't say; my impression is I have, but I can't say.

Q. What other book have you seen?

A. The bond register, which gives the consecutive nos. of the bond & denomination and some memoranda as to their disposition or negotiation; I can't say to what extent as to each bond.

Q. Do you know whether the bonds entered on page 225 of journal as rec'd from Kilbourn at the time of that exchange were not then, in fact, the property of the R. R. Co.?

A. I know that they were not, but that they became so by this exchange.

Q. How do you know they were not?

A. Because such an entry could be authorized by nothing else than the fact that they belonged to Kilbourn.

785 Q. Was not Mr. Kilbourn at that time a director and officer of the co., and as such actively engaged in taking and receiving as such officer for the co. these mortgages and other property for the co.

A. He was a director at that time, I think; no doubt of it. I think he was not engaged in receiving these securities.

Q. What you mean, I take it, is this is it not, that the bonds he exchanged with you for the co. were his bonds—his property?

A. Yes.

Q. You last saw the bond register in Mr. Mariner's possession?

A. Yes.

Redirect:

Q. Look at page 275 of the co.'s journal and see if you can find the entry of the deposit of bonds 577, 588, & 589 with Mr. Cooke?

A. I do, and find the record of the deposit; but the record does not specify the purpose of the deposit, but refers to the receipt, and I can't tell the purpose of the deposit.

Q. Have you just examined the journal, and can you now state what disposition was made of all of the bonds left with Mr. Cooke at the time of the deposit in trust of those bonds of which you have just testified, viz, No. 577, 588, & 589; and, if so, what was done with them?

786 A. I have, and can. They were all applied on that same obligation of the co., bill payable No. 73.

Q. Were they not all hypothecated with Mr. Cooke as collateral security for that B. P. No. 73?

A. Looking at the entries, I am willing to stand by the probability that it was so; but so long as there is a possibility that it may have been otherwise, I choose not to affirm it. I cannot affirm it from recollection.

Q. What different entries than that would you have made if these farm mortgages had been left as collateral security with Mr. Cooke for the co.'s note to him, and taken up and applied and endorsed upon the note?

(Objected to as first above.)

A. No different. Not in any respect different.

Recross-exam'n:

Q. What different entries would you have made in regard to the withdrawal of these bonds and the subsequent disposition of them from what you have made if Moses Kneeland had presented for pay't bill No. 73?

A. No different.

Q. Will you examine on journal, page 274, under date April 17th, 1855, and state briefly what that entry shows, giving the number, if you please, in your answer.

787 A. It shows that real-estate bonds Nos. 568, 577, 588, 589, and 656, amounting to $8,500.00, had for some reason been deposited (previously) with Kneeland and Hull, and that they were then, for some purpose not now known to me or stated in the entry, withdrawn by the company, and another entry of the same date shows that the same bonds were deposited with Cook, and his receipt taken therefor. Kneeland and Hull were a firm of bankers at the time and this Kneeland was James Kneeland, a brother—a half-brother—of Moses Kneeland.

NOTE.—Held open until Sept. 24, 1873, at 4 p. m., when the parties appeared as before and the direct examination of the entries was resumed and continued as follows, to wit:

Q. Have you since the adjournment last evening examined the journal of the company further?

A. I have and have it now before me.

Q. And are you able to say to whom bill payable No. 73 was given and for what account?

(Objected to as first above.)

A. With the journal before me, I am able to say that bill payable 73 was issued by the company to Cook and Sherwin. The entry is March 6, 1855. It is in my own handwriting.

Q. To what account or consideration?

788 A. It appears here that bills payable Nos. 73 & 74 were each $10,000.00. Bill No. 73 & 74, of same amount, was given in exchange for No. 63, which was for $20,000.00—No. 63 of bills payable of the company.

Q. For what was bill payable No. 63 given, and to whom and when?

(Same objection as first above.)

A. It was given, as appears from the entry, under date of January 23, 1855, to Cook and Sherman on a/c.

Q. At that time was the company indebted to them, Cook and Sherman, in more than the amount of that bill; and, if so, upon what a/c and consideration?

(Same objection as last taken.)

A. Cook and Sherman are debited at this date, January 23, amount of $61,485.54. This $20,000.00 is one of the items making up that amount, that is, bills payable No. 63.

Q. It is only a few minutes' work to run back in that journal to the statement between the company and Cook and Sherman; won't you run through the journal from the date of the settlement and see whether or not the company was indebted in that amount to Cook and Sherman?

A. I find on the date of Dec. 30, 1854, the amount of $309,709.37 to the credit of Cook and Sherman for some items, including railroad work and materials and other items, viz, rolling stock and cross-ties.

789 Q. Won't you run through the journal and see if there was, on that date, that amount due them—$61,000.00—the am't of bills payable?

A. I can't do it without the ledger?

Q. Don't you know when Cook and Sherman commenced work for the company?

A. No.

Q. What did they do for the company?

(Same objection as last.)

A. I can't remember what dealings we had with them. It was as contractors for railroad construction and for iron rails.

Q. Won't you look through the journal from the commencement and see if you can tell whether the company were indebted to Cook and Sherman in the amount of these bills, payable at the time they were given?

(Same objection as last.)

A. That would be equivalent to posting their entire a/c upon the ledger, which is the only document by which it is usual in business to affirm what a balance is with a party in dealing, and more than I could do in a short time.

Q. Did you do such a thing while you were secretary of the company as to give a man sixty-odd thousand dollars of property of the company when the company was not indebted to him?

790 (Same objection as last.)

A. No.

Q. At the same time with the payment of this $61,000.00, did you give to Cook and Sherman anything else?

A. I did.

Q. What?

A. Fifty shares capital stock of the company.

Q. At the same time did you give Cook and Sherman collateral security for these bills payable?

(Same objection as before.)

A. Yes; bonds of the company to the amount of twelve thousand dollars.

Q. At the time you took up this bill 63 and gave for it bills payable 73 & 74, did you the interest on bills payable 63?

(Same objection as before.)

A. Yes.
Q. How much?
A. Eleven hundred and twenty-five dollars.
Q. Were these bills payable, 63, 73, & 74, payable in farm mortgages?
A. I could not say.
Q. The interest that was paid at that time was paid in farm mortgages, was it not?
A. All but $25.00.
Q. The entries of payments that we found yesterday was all made in farm mortgages at par, was it not?
(Same objection as before.)
A. Yes, they appear to have been.
791 Q. What do you mean by appear to have been?
A. The entry of July shows it.
Q. They are in your handwriting, are they not?
A. They are.
Q. Were they made as the fact was at the time?
(Same objection.)
A. Yes.
Q. These matters all came within your means of knowledge at the time, did they not?
A. Undoubtedly.
Q. They were all such as came within your duty as secretary to participate in?
A. They were.
Q. At what rate was the company selling farm mortgages at that time?
(Objected to as last above.)
A. It appears from the journal, 70 to 80 cents.

Cross-examination by Mr. MURPHEY:

Q. Do you know anything more about the facts that you have been testifying to this morning than what you have derived from an inspection of this journal?
A. I know nothing which enables me to speak any more definitely of the facts than what I find in the journal.
792 Q. Do you know from any source whatever whether bill payable No. 73 was a negotiable instrument or not?
A. I do not.
Q. When was that bill paid?
A. Part May 26, 1855, $1,000.00, and part July 23, 1855, $7,500.00; and I find no entry showing a payment of the balance.
Q. Do you know, and does this journal show, who held bill 73 at the time of the two payments last referred to?
A. I do not know, and the entry does not show.
Q. Would the entries have been made upon this journal under the two dates last referred to as they were and now appear, if Moses Kneeland had been then the owner of bill 73?
A. Just the same.
Q. Can you tell from this journal, without the ledger belonging to it, what the real state of the a/c of Cook and Sherman with the R. R. Co. was on the date of the debit referred to by you of sixty-odd thousand dollars?
A. I can tell, but not now. It would involve the posting of their entire a/c from this journal.

Redirect:

Q. This journal shows that bill 73 was given to Cook and Sher-
793 man. It shows that this $8,500.00 of securities were hypothecated with C. D. Cook for some purpose, and it shows that C. D. Cook from time to time returned these securities and that they were endorsed as payments on that note, does it not?

(Same objection as before.)

A. Yes.

Q. How can you say, then 'it requires theposting of the journal to show whether or not C. D. Cook held that bill?

A. Because the entry is such as might have been made under other circumstances.

Q. It is your idea, then, that this journal would not show the fact unless it precluded the possibility of it being any other way?

A. Yes.

Q. Are you not entirely satisfied in your own mind that C. D. Cook did hold that bill 73 at the time you named?

(Objected to as irrelevant, incompetent, and immaterial and leading.)

A. Yes.

Q. From what are you satisfied?

(Same objection.)

A. From the absence of any impression remaining upon my mind that there was any occasion for any other shape for that transaction.

Re-cross examination:

Will you please read the two entries, one of May 26, the other
794 of July 23rd, 1855, as the same appears upon this journal?

A. (Page 284.)

MAY 26, 1855.

Bills payable, Dr	$1,000 00
To securites in trust	$1,000 00

To bond No. 656 withdrawn from deposit with Cook and Sherman and endorsed on bill 73, July coupon being cut off and cancelled.

(Page 306.)

JULY 23, 1855.

Bills payable, Dr	$7,500 00
To securities in trust	$7,500 00

To this am't in farm mortgage bonds, to wit, Nos. 568, 577, 588, & 589, this date returned to us by C. D. Cook and endorsed on our bill payable No. 73 is withdrawn from hypothecation and paid on said note, the same to apply on and stop interest from and after July 1st inst., and C. D. Cook's receipt of April 17 last surrendered.

Q. May not these same bonds thus returned and endorsed on bill 73 have been prior to that time hypothecated with Mr. Cook by the R. R. Co. as security to said Cook for the payment of some debt or the
795 performance of some contract of the R. R. Co, other than the one represented in bill 73?

A. That is a thing that would be possible.

Q. Is it not true that Cook, of Cook and Sherman, as contractors, had received from time to time from said company such securities, such kind

of securities aside from these, if any were delivered to them for the payment of bill 73?

A. I can't remember anything about it.

LEVI BURNELL.

796 In the circuit court of the United States for the eastern district of Wisconsin. In equity

LAWRENCE G. GRAHAM ET AL.
vs.
LA CROSSE AND MILWAUKEE RAILROAD Company et alii.

Deposition of H. L. Palmer on the part of the defendants, before Francis Bloodgood, commissioner of the circuit court.

At the commissioner's office, Milwaukee, May 11, 1875. Present, N. S. Murphey, of counsel for complainant, and E. Mariner, for the defendants.

HENRY L. PALMER, being duly sworn for the defendant, says:

I reside in the city of Milwaukee. My name is Henry L. Palmer; am an attorney-at law. In 1858 I was of the firm of Palmer & Stark, and we were attorneys for the complainants here, in the recovery of two judgments in that year against the La Crosse and Milwaukee Railroad Co.; one for $29,000, and the other for $1,100.00, or about those sums.

Q. In 1858 the complainants here were named def'ts in a suit brought by the Bridgeport Savings Bank ag'st the La Crosse and Milwaukee Railroad Co. and others, defendants, to foreclose a mortgage upon prop-

797 erty in the city of Milwaukee, in the circuit court of Milwaukee County; did your firm enter an appearance for them, said complainants here, in this suit?

A. Yes; we did.

Q. In whose handwriting is that appearance, so far as written?

A. The signatures for the several defendants, myself as defendant, and Edwin Townsend, Franklin J. Blair, E. R. Persons, Lawrence Graham, Donald D. Scott, is in my handwriting, in the original paper on file.

Q. At the time you entered that appearance for the complainants here, did you have authority from them to enter that appearance?

A. I have no doubt we had.

Q. How long, at that time, had you been practicing law?

Ans. Fifteen years.

Cross-examination:

Q. Have you, to-day, any distinct personal recollection of being authorized by the complainants, or either of them, and, if so, which one, to enter an appearance in that cause?

Ans. I have no recollection whatever of any specific direction from either of them to enter that particular appearance.

798 Q. Have you any personal recollection of ever being authorized by the complainants, or either of them, to waive the service of process on them in that case?

Ans. Pending the litigation between Graham and Scott and the La Crosse Railroad Company resulting in the recovery of the two judgments mentioned, and the efforts to collect them, running through several months in the summer and fall of 1858, I had frequent conferences with both Graham and Scott, sometimes together and sometimes sepa-

rately, in reference to those suits; but so long a time has elapsed that I have no distinct recollection of any particular thing said by either party during those conferences, and I have no distinct recollection of any verbal direction from them, or either of them, to waive the service of process in that case.

Q. In your direct exam'n you say you have no doubt that we (meaning Palmer & Stark,) had authority to enter an appearance for Graham and Scott in that case, pending in the State circuit court; now, since you have no personal recollection about it, on what do you base that ans'r, that you have no doubt you had such authority?

Ans. Upon my general practice in such cases; I do not believe that I ever entered an appearance for a party in any case without au-
799 thority to do so, and I cannot conceive it possible that I should have done so in this instance.

Q. May you not in this instance have entered this appearance without special authority, by reason of your firm's name appearing upon the record, and being retained to recover the judgments you speak of for the complainants?

Ans. I think not?

Q. That is sometimes practiced by lawyers, is it not?

A. Not by me. I don't think I ever did it. It is possible that I might have done it, but it was not my general practice; on the contrary I believe my invariable practice was the other way.

Q. Now, Mr. Graham, one of the complainants has testified in this case that he never authorized that appearance. Is your recollection sufficiently clear to enable you to say that he did?

A. I have already stated that I have no recollection of any specific conversation between Graham & Scott, or either of them, and myself or our firm, in relation to it, and do not recollect any specific direction from either of them, to enter the appearance.

Q. You speak of conversations between the complainants and your firm and self, during the time you were prosecuting the suits and
800 endeavoring to collect the judgments; now, did your firm ever do anything towards collecting the judg'ts otherwise than to cause executions to issue and be levied upon certain lands in Milwaukee County?

A. I don't remember.

Redirect:

Q. You have been informed by Mr. Murphey that Graham has testified in this suit that he did not authorize that appearance to be entered; are you able to say as positively as you did before that you have no doubt that your firm had authority to enter that appearance?

A. I am.

Recross:

Q. Do you make that ans'r upon the theory that Mr. Graham's oath is not entitled to credence?

A. I do not. I have no doubt that Mr. Graham has stated what he believed to be the fact. I have also stated what I believe to have been the fact. It is impossible for me to recollect what was said, or in detail what was done so long ago.

Q. You say you have no doubt Graham has stated what he believed to be the fact, and that you have stated what you believed to be the fact; now, concede both propositions, you say, without pretending to remember any fact about it, that you have no doubt you had au-
801 thority to enter that appearance, while Graham swears positively

that he did not authorize you; do you not think that fairly considered, that Mr. Graham's statement, which you admit to be honest, ought, under the circumstances of your imperfect recollection, to be permitted to raise a doubt in your own mind?

A. No.

Q. Suppose Mr. Scott should as positively swear that he gave you no authority either to enter an appearance in that case for Graham and Scott, would you still no doubt what you were authorized to enter the appearance?

A. I should still have no doubt that we were authorized to enter the appearance.

Q. That is, you mean, I suppose, authority from Graham and Scott, or one of them, to enter the appearance, do you not?

A. I do mean from one or both of them.

Q. Then, do you or not mean to say this, in substance, that you have more confidence in your uniform observance, in a rule of your personal practice, than you have in the oath or recollection of Graham and Scott, since you have stated that you do not have any personal recollection of an authority from either of them to enter the appearance.

802 A. I do not assume to question either the oath or integrity of Graham or Scott. What I mean to say is what I have already stated, that in view of what has been the general rule of my practice, and my relations to the litigation at that time, I do not believe I could have entered their appearance without their knowledge and their authority, general or specific, to do so.

Q. Question repeated, and I respectfully suggest to the witness and com'r that the ans'r is a fair one to the question a full one to the question.

A. I think it is fair and full; I have intended to make it so.

Q. What is the fact that induces you to adhere with the same tenacity to your belief that these men, or one of them, authorized you to appear, and about which you have no personal recollection, upon the supposition I put to you that they both swear positively that they did not so authorize you?

A. The fact that we had charge of the litigation at the time; that we had interviews in relation to it, which undoubtedly extended to the suit of the Bridgeport Savings Bank as well as the others; and my belief that I did not in that instance depart from my general practice in such cases.

803 Q. Have you any personal recollection to-day of talking with the complainants, and, *and* if so, which one of them, in regard to the Bridgeport Savings Bank mortgage, or is it a mere general impression on your mind?

A. I have no recollection of any particular conversation with either of them in relation to that mortgage, or to either of the judgments.

H. L. PALMER.

804 In the circuit court of the United States for the east. dist. of Wis.
In equity.

LAWRENCE G. GRAHAM ET AL.
vs.
THE LA CROSSE & MILWAUKEE R. R. CO. ET AL.

MILWAUKEE, *May* 20, 1875.

Before Francis Bloodgood, examiner. Present, N. S. Murphey, for complainant. E. Mariner, for def'ts.

DONALD D. SCOTT, sworn for complainant, says:

(Counsel here states that this deposition is taken by consent, but to be used in evidence only in case that of H. L. Palmer is used in evidence.)

Question by N. S. MURPHEY:

Q. Are you one of the plaintiffs in this case?
A. Yes, sir.
Q. Where do you reside?
A. At present in St. Paul, Minnesota.
Q. How long have you resided there?
A. I have been in the State about 4 years.
Q. Did you reside in Wisconsin before you moved to Minnesota?
A. Yes, sir.
Q. Do you know H. L. Palmer and Joshua Stark?
A. I know Mr. Palmer.
Q. How is it with Stark?
805 A. I don't remember; I may possibly have seen him, but I don't remember that I know him.
Q. Did you ever personally know the firm of Palmer & Stark?
A. I did not.
Q. Do you have a general knowledge of the lots of land and their location against which the proceedings in this case are directed; do you know where the lots lie?
A. I don't know, I won't be positive.
Q. I want to know if you know where the lands lie against which this suit is directed; where they lie?
A. The' lie in the vicinity of the old railroad depot, Milwaukee R. R. depot, as I understand it.
Q. In the circuit, Milwaukee County, as appears by a record introduced from that court in this cause, there was commenced a suit by the Bridgeport Savings Bank against the La Crosse and Milwaukee R. R. Company et al. in 1858 to foreclose a mortgage for about $4,000 upon a portion of the lots against which we are proceeding in this case; among the defendants named in that foreclosure is the names of Lawrence G. Graham and Donald D. Scott, and there appears to be no service
806 of the summons upon either of you. Now the question I wish to ask is, did you personally ever employ the firm of Palmer and Stark or either of those men to appear for yourself or for Graham & Scott in that foreclosure case as your attorneys? Did you ever employ them?
A. No, sir.
Q. When did you first hear that there had been such a foreclosure at all?
A. Well, I could not say; it was along time after we had that judgment against the La Crosse road, very long time after that that I heard there was any such proceedings.
Q. Well, now, what proceedings do you mean? Do you understand my question. I ask you when did you first hear that there had been any foreclosure of that mortgage?
A. I don't know as I ever heard it.
Q. Did you hear of it on yesterday?

A. That I think was the first, I am positive of it.
Q. Then what did you mean by saying that it was a long time after that judgment that you heard it; do you refer to that?
A. It was a long time; I may be mistaken; I don't think I refer to anything but this that I heard yesterday.
Q. Who told you this yesterday?
A. I heard of it here in town.
807 Q. Did you ever authorize Palmer & Stark, or either of them, to waive the service of summons on you in that foreclosure case?
A. No, sir.
Q. I wish to know if you'r' certain about that?
A. I am positive.
Q. As between you and Graham, who has had the principal charge of the litigation which you two have had against the La Crosse & Milwaukee R. R. Company?
A. Mr. Graham has always had it.
Q. When did you first learn that Graham & Scott had been named as defendants in that foreclosure case?
A. Yesterday.

Cross-examination:

Q. When did you first become acquainted with Mr. Palmer?
A. I have been acquainted with him for 15 or 18 years.
Q. Did you retain him or the firm of Palmer & Stark in the case against the La Crosse R. R. Company?
A. No, sir; never did.
Q. How long has Mr. Palmer been your attorney or the attorney of the firm?
A. I don't think he ever was.
Q. Where were you in the years 1856, 1857, & '58; where did you reside?
A. '56 I was in Watertown, Wis.; '57 & '8, I was there.
808 Q. Where did you know Mr. Palmer?
A. Knew him in Milwaukee.
Q. Did he ever do any business for your firm?
A. Never.
Q. Who were your attorneys here in Milwaukee?
A. Mr. Carpenter was the first attorney—Matt. Carpenter.
Q. Were you ever in Mr. Palmer's office?
A. I don't remember. I may have been there; I ain't positive.
Q. For what purpose did you go there?
A. I don't remember; no particular purpose, I guess.

Redirect:

Q. I understand you to say that you never employed Palmer as the attorney for the firm of Graham & Scott; do I understand you right?
A. Yes, sir.
Q. Do you mean by that that you didn't employ him, or do you mean that he wasn't employed by either you or Graham?
A. I mean that he wasn't employed by the firm at all.
Q. Do you know who recovered the judgment in the State court in the fall of 1856 in favor of Graham and yourself against the La Crosse and Milwaukee road?
A. Matt. Carpenter.
Q. Are you sure about that, or are you mistaken? What is the fact?

809 A. It is so long since, and I have been away so much, that I disremember.

Q. The record shows that the judgments in the State court were recovered by Palmer & Stark. Now, if the record does so show, do you still insist that they never represented you?

A. I am not positive.

Q. Who has had the charge of employing counsel in the conduct of your litigation against the La Crosse road, yourself or Graham?

A. Mr. L. G. Graham has had it from the commencement up to this day.

D. D. SCOTT.

810 *Proposed amendments to bill presented at hearing.*

Circuit court of the United States, eastern district of Wisconsin. In equity.

LAWRENCE G. GRAHAM & DONALD D. SCOTT, complainants,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company & others, defendants.

And here in court, at the hearing of this cause, come the said complainants, by N. S. Murphey, their solicitor, and pray the court now here for leave to amend their bill of complaint in this action, as follows:

1st amendment.

Add to the stating part of said bill the following words, that is to say:

"Your orators further state and show to the court that the said defendants sometimes pretend that the said La Crosse & Milwaukee Railroad Company, in A. D. 1858, and again in A. D. 1859, after it was fully known to the said board of directors of said company and said company that said purchase by said Nash was for the benefit of said Kneeland, and said sale was therefore voidable, at the election of said railroad company, the said railroad company ratified and confirmed said
811 sale to said Nash, for the benefit of said Kneeland; and that said railroad company executed to said Moses Kneeland and said James Ludington, or one of them, a deed of confirmation of said sale; but your orators further show that in A. D. 1857 said railroad company became and ever since and hitherto has remained utterly and hopelessly insolvent; that said pretended ratification and deed of confirmation was without any consideration whatever moving to railroad company; and that said ratification and said deed of confirmation were made and given with the intent on the part of said railroad company to thereby hinder, delay, and defraud its creditors; and that said ratification and deed of confirmation are null and void as to your orators, who were then the creditors of said company."

II amendment.

After the words added as last above to the stating part of said bill add the following words, that is to say:

"And your orators further state and show to the court that the said

defendants sometimes pretend that there was upon a part of said premises, at the time they were conveyed to said C. D. Nash, as aforesaid, a
812 certain mortgage executed by the Milwaukee, Fond du Lac and Green Bay Railroad Company to one Edward D. Holton, and by him assigned to the Bridgeport Savings Bank, a corporation existing and organized under the laws of the State of Connecticut, to secure the payment of about four thousand dollars and interest thereon; and that after said sale to said Nash said mortgage was foreclosed by said Savings Bank, and said premises covered by said mortgage were duly sold on a decree of foreclosure rendered by the circuit court of the State of Wisconsin in and for the county of Milwaukee, in a suit to foreclose said mortgage, on or about the 7th day of February, A. D. 1860, and conveyed to said bank, and thereafter sold by said bank to said defendants, or some of them, and that thus and thereby said defendants, or some of them, acquired a title to the premises covered and conveyed by said mortgage. But your orators further show that the said Nash, when he pretended to purchase the premises from said railroad company, as hereinbefore stated, agreed to pay said mortgage as a part of the purchase money of said premises; and that when said Nash afterwards conveyed said premises, so pretended to be purchased by him, to said Kneeland, said Kneeland agreed to and with said Nash to pay and satisfy said mortgage; and that
813 said pretended foreclosure of said mortgage sale of said premises to said bank, and conveyance thereof by said bank to said defendants, or some of them, were had and taken as a means of satisfying said mortgage and covering up the fraud in said purchase by said Nash and strengthening the claim of said defendants to said premises so conveyed to said Nash, the better and more surely to injure, delay and defraud your orators and the other creditors of said railroad company."

III *Amendment.*

Strike out the words in the original bill, on page eight, "did sell and transfer said bonds, worth, as they then and there well knew, more than one hundred thousand dollars, to one Charles D. Nash, for the nominal consideration of twenty thousand dollars," and insert instead thereof the following words, viz., "did negotiate the sale, or the board of directors, of which said Kneeland, Ludington and Kilbourn were members, did agree, on behalf of said company, to sell, and thereupon the said La Crosse & Milwaukee Railroad Company did sell and by deed convey to one C. D. Nash for the nominal consideration of twenty-five thousand dollars."

N. S. MURPHEY,
Solicitor for Complainants.

814 Circuit court of the United States for the eastern district of Wisconsin.

LAWRENCE G. GRAHAM & DONALD D. SCOTT
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company, Ephraim Mariner, The Chicago, Milwaukee & St. Paul Railway Company & others.

EASTERN DISTRICT OF WISCONSIN, *ss:*

John W. Cary, being duly sworn, deposes and says that he is the

general solicitor of the Chicago, Milwaukee & St. Paul Railway Company, and has had the principal charge of their legal business since the organization of the company, and has been longer engaged in the business of the company than any of its directors or any other officer or employé thereof to his knowledge.

That he was cognizant of the purchase of the premises in this suit named and attended to the making & transfer of the papers with the Kneeland heirs and the payment to them of the consideration thereof; that he did not have charge of looking up & passing the title,
815 which was done by the firm of Finches, Lynde & Miller. That this deponent was engaged in the business of the company at the time of the purchase & in daily communication with the directors of said company; that from his knowledge of the affairs & business of said company he knows that the purchase of the premises in question by the said Chicago, Milwaukee & St. Paul Railway Company were made in good faith, for a full price, without any notice of plaintiffs' claim thereon; that said premises are now used as a part of the defendant's depot grounds in Milwaukee, and that the said defendant since the purchase of said lots in 1864 has expended on said lots & the other lots adjoining and necessarily used in connection therewith over $500,000 in improvements of a permanent character.

And the said defendant, Chicago, Milwaukee & St. Paul Railway Company, objects to the amendments to the bill in this case proposed by the complainants as specially unjust & oppressive upon this defendant not only for the reasons above stated but also because this deponent further says:

First. That all the members of the executive committee of the board of said La Crosse & Milwaukee Railroad Company who were
816 present at the meeting when the proposition of C. D. Nash to purchase the premises in question was received & adopted are now dead except Edwin H. Goodrich.

Second. That the president of said company & most of the active managers of said company at that time are now dead.

Third. That of the eight directors present & acting on the 10th day of March, 1858, when the sale of said lots was ratified & confirmed by a vote of the board, Stephen Clark, the president, Jackson Hadley, Byron Kilbourn & Moses Kneeland, directors, are dead, and that George W. Luther, if not dead, is not within the reach of this defendant to the knowledge of this deponent.

And further this deponent says not.

JOHN W. CARY.

Sworn to and subscribed before me this 26th day of June, A. D. 1875.

[SEAL.] G. E. WEISE,
Notary Public, Milwaukee Co., Wis.

817 And now, at this same term, to wit, January term, 1876, and on the eighty-sixth day thereof, to wit, on the twenty-second day of April, A. D. 1876, present, the honorable Thomas Drummond, circuit judge, presiding, the following proceedings were had, to wit:

Final decree.

LAWRENCE G. GRAHAM & DONALD D. SCOTT
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company, The Milwaukee & St. Paul Railway Company, James Ludington, Ephraim Mariner, James Kneeland, administrator of the estate of Moses Kneeland, deceased, Sarah O. Chandler, Ellen C. Sexton, Frances Flint, & Moses Burr Kneeland. } In equity.

This day came the parties, by their counsel, and this cause having been heretofore argued by the counsel of the parties and taken under advisement by the court, and the court being now sufficiently advised of and concerning the same, it is ordered by the court that the order dismissing the bill as to the defendant Ephraim Mariner be and
818 hereby is vacated, and that he be reinstated as a party defendant. It is further ordered that the application of the complainants' file the amendments to the bill of complaint proposed to be made at the hearing be and hereby is denied.

And it is further ordered, adjudged, and decreed that the complainants' bill and supplemental bill of complaint be and hereby are dismissed, and that the complainants pay the costs of the same, to be taxed, within ten days, or in default thereof that execution be issued therefor.

APRIL 20, 1877.

This day came the complainants, by their counsel, and prayed an appeal to the Supreme Court of the United States. Whereupon it is ordered by the court that said appeal be and hereby is allowed, upon the said complainants' filing the usual bond, in the penalty of five hundred dollars. And came said complainants, and filed the bond of Alonzo L. Kane and Henry H. West in the said sum of five hundred dollars, conditioned to prosecute said appeal to effect and answer all damages and costs if they fail to make their appeal good, which bond is approved by the district judge and is as follows:

Know all men by these presents that we, Alonzo L. Kane and Henry H. West, both of the city and county of Milwaukee, in the State
819 of Wisconsin, are held and firmly bound unto The La Crosse & Milwaukee Railroad Company, James Ludington, The Milwaukee & St. Paul Railway Company, Sarah O. Chandler, Ellen C. Sexton, Frances Flint, and Moses Burr Kneeland and Ephraim Mariner in the full and just sum of five hundred dollars, to be paid to the said The La Crosse & Milwaukee Railroad Company, James Ludington, The Milwaukee & St. Paul Railway Company, Sarah O. Chandler, Ellen C. Sexton, Frances Flint, Moses Burr Kneeland, and Ephraim Mariner, or to their certain attorney, successors, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 20th day of April, A. D. 1877.

Whereas lately, at a term of the circuit court of the United States for the eastern district of Wisconsin, begun and held at the city of Milwaukee on the first Monday of January, A. D. 1876, in a suit depending

in said court between Lawrence G. Graham and Donald D. Scott, complainants, and the said The La Crosse and Milwaukee Railroad Company, James Ludington, The Milwaukee & St. Paul Railway Company, Sarah O. Chandler, Ellen C. Sexton, Frances Flint, Moses Burr Kneeland, and Ephraim Mariner, defendants, a decree was rendered
820 against the said Lawrence G. Graham and Donald D. Scott, and the said Lawrence G. Graham and Donald D. Scott having taken an appeal to the Supreme Court of the United States to reverse the said decree:

Now, the condition of the above obligation is such that if the said Lawrence G. Graham and Donald D. Scott shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their appeal good, then the above obligation to be void; else, to remain in full force and virtue.

ALONZO L. KANE. [SEAL.]
HENRY H. WEST. [SEAL.]

(Endorsed:)
Approved.

CHAS. E. DYER, *Judge.*

Whereupon a citation issued.

821 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the Eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being, with volume one accompanying the same, a full and complete transcript of the record and proceedings in the case of Lawrence G. Graham et al. vs. The La Crosse & Mil. R. R. Co. et al.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district, this 9th day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the 102nd.

[SEAL] EDWARD KURTZ, *Clerk.*

822 THE UNITED STATES OF AMERICA, *ss:*

To the La Crosse & Milwaukee Railway Company, The Milwaukee & St. Paul Railway Company, James Ludington, Sarah O. Chandler, Ellen C. Sexton, Frances Flint, Moses Burr Kneeland and Ephraim Mariner, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal in the circuit court of the United States for the eastern district of Wisconsin, wherein Lawrence G. Graham and Donald D. Scott are appellants and you are appellees, to show cause, if any there be, why the decree passed against the said appellants should not be reversed and speedy justice should not be done to the parties in that behalf.

Witness the honorable Charles E. Dyer, district judge of the United States for the eastern district of Wisconsin, at the city of Milwaukee,

in the said district, this 20th day of April, A. D. 1877, and of our Independence the 101st.

[SEAL.] CHARLES E. DYER,
Dist. Judge.

We accept service of the above citation this 23d day of April, A. D. 1877.

E. MARINER,
Sol'r for James Ludington.
E. MARINER,
In Person.
JOHN W. CARY,
Sol'r for Chicago, Milwaukee & St. Paul Railway Company.

823 Served on the within named Sarah O. Chandler, Ellen C. Sexton, Frances Flint, Moses Burr Kneeland and Ephraim Mariner, by delivering personally a copy of the within citation to Ephraim Mariner, their attorney of record, this 6th of October, A. D. 1877.

HENRY FINK,
U. S. Marshal.

Fees: service 2.00; copy, 20—$2.20.

(Indorsement on cover:) No. 289. Lawrence G. Graham and Donald D. Scott, appellants, vs. The La Crosse & Milwaukee Railroad Company, The Milwaukee & St. Paul Railway Company, et al. E. Wisconsin. C. C. U. S. Filed 13th October, 1877.

C